THE

EXAMINATION

OF THE

PRESIDENT's MESSAGE,

AT THE

OPENING OF CONGRESS DECEMBER 7, 1801.

REVISED AND CORRECTED

BY

THE AUTHOR.

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PREFACE.

THE Editor, having received letters from various parts of the United States, expressing a strong desire to have THE EXAMINATION of the President's Message, which originally appeared in the New-York Evening Post, republished in a pamphlet, communicated these requests to the author, who has consented to revise and correct it, for this purpose. It is hoped that the advantage of reading these valuable papers in an uninterrupted series, will secure to them that serious and attentive perusal, which it is agreed on all hands, they so eminently deserve. And when the leading measures of those now in power shall be hereafter felt in their remote consequences, it may afford a melancholy gratification to the reflecting reader, to observe, how clearly they were perceived and how forcibly exposed by a co-temporary writer. At

this time, the attack by the Legislative on the Judicial Branch of our Government, has been commenced in the House of Representatives. The known temper and disposition of the majority there, justify our most alarming apprehensions.—Could conviction avail, the arguments contained in the following pages, would be sufficient to arrest the progress of this bold advance of the Legislature to despotic power. Would to God they might yet *see the things which belong to their peace, before they shall be forever hidden from their eyes!* Let those who precipitate the present system of wild innovation, reflect, that while this pamphlet shall be read, they will never be permitted to shelter themselves under the pretext that they were ignorant of the true tendency of these fatal measures.—

EDITOR.

March 2, 1802.

THE EXAMINATION.

NUMBER 1.

INSTEAD of delivering a *Speech* to the House of Congress, at the opening of the present session, the President has thought fit to transmit a *Message*. Whether this has proceeded from pride or from humility, from a temperate love of reform, or from a wild spirit of innovation, is submitted to the conjectures of the curious. A single observation shall be indulged—since all agree, that he is unlike his predecessors in essential points, it is a mark of consistency to differ from them in matters of form.

Whoever considers the temper of the day, must be satisfied that this Message is likely to add much to the popularity of our chief magistrate. It conforms, as far as would be tolerated at this early stage of our progress in political perfection, to the bewitching tenets of that illuminated doctrine, which promises man, ere long, an emancipation from the burdens and restraints of government; giving a foretaste of that pure felicity which the apostles of this doctrine have predicted. After having, with infinite pains and assiduity, formed the public taste for this species of fare, it is certainly right, in those whom the people have chosen for

their caterers, to be attentive to the gratification of that taste. And should the viands, which they may offer, prove baneful poisons instead of wholesome aliments, the justification is both plain and easy—*Good patriots must at all events please the People.* But those whose patriotism is of the OLD SCHOOL, who differ so widely from the disciples of the new creed, that they would rather risk incurring the displeasure of the people, by speaking unpalatable truths, than betray their interest by fostering their prejudices; will never be deterred by an impure tide of popular opinion, from honestly pointing out the mistakes or the faults of weak or wicked men, who may have been selected as guardians of the public weal.

The Message of the President, by whatever motives it may have been dictated, is a performance which ought to alarm all who are anxious for the safety of our Government; for the respectability and welfare of our nation. It makes, or aims at making, a most prodigal sacrifice of constitutional energy, of sound principle, and of public interest, to the popularity of one man.

The first thing in it, which excites our surprize, is the very extraordinary position, that though *Tripoli had declared war in form*, against the United States, and had inforced it by actual hostility, yet that there was not power, for want of *the sanction of Congress*, to capture and detain her cruisers with their crews.

When the newspapers informed us, that one of these cruisers, after being subdued in a bloody conflict, had been liberated and permitted quietly to return home, the imagination was perplexed to divine the reason. The conjecture naturally was, that pursuing a policy, too refined perhaps for barbarians, it was intended, by that measure, to give

the enemy a strong impression of our magnanimity and humanity. No one dreampt of a scruple as to the *right* to seize and detain the armed vessel of an open and avowed foe, vanquished in battle. The enigma is now solved, and we are presented with one of the most singular paradoxes, ever advanced by a man claiming the character of a statesman. When analized, it amounts to nothing less than this, that *between* two nations there may exist a state of complete war on the one side—of peace on the other.

War, of itself, gives to the parties a mutual right to kill in battle, and to capture the persons and property of each other. This is a rule of natural law ; a necessary and inevitable consequence of the state of war. This state between two nations is completely produced by the act of one—it requires no concurrent act of the other. It is impossible to conceive the idea, that one nation can be in full war with another, and this other not in the same state with respect to its adversary. The moment that two nations are, in an absolute sense, at war, the public force of each may exercise every act of hostility, which the general laws of war authorise, against the persons and property of the other. As it respects this conclusion, the distinction between offensive and defensive war, makes no difference. That distinction is only material to discriminate the aggressing nation, from that which defends itself against attack.—The war is offensive on the part of the state which makes it ; on the opposite side it is defensive : but the rights of both, as to the measure of hostility, are equal.

It will be readily allowed, that the Constitution of a particular country may limit the Organ, charged with the direction of the public force, in the

use or application of that force, even in time of actual war : but nothing short of the strongest negative words, of the most express prohibitions, can be admitted to restrain that Organ from so employing it, as to derive the fruits of actual victory, by making prisoners of the persons and detaining the property of a vanquished enemy. Our Constitution happily, is not chargeable with so great an absurdity. The framers of it would have blushed at a provision, so repugnant to good sense, so inconsistent with national safety and inconvenience. That instrument has only provided affirmatively, that, " The Congress shall have power to declare War ;" the plain meaning of which is, that it is the peculiar and exclusive province of Congress, *when the nation is at peace*, to change that state into a state of war ; whether from calculations of policy, or from provocations, or injuries received : in other words, it belongs to Congress only, *to go to War*. But when a foreign nation declares, or openly and avowedly makes war upon the United States, they are then by the very fact, *already at war*, and any declaration on the part of Congress is nugatory ; it is at least unnecessary. This inference is clear in principle, and has the sanction of established practice. It is clear in principle, because it is self-evident, that a declaration by one nation against another, produces at once a complete state of war between both ; and that no declaration on the other side can at all vary their relative situation ; and in practice, it is well known, that nothing is more common than when war is declared by one party, to prosecute mutual hostilities without a declaration by the other.

The doctrine of the Message includes the strange absurdity, that, without a declaration of war by

Congress, our public force may destroy the life, but may not restrain the liberty, or seize the property of an enemy. This was exemplified in the very instance of the Tripolitan corsair. A number of her crew were slaughtered in the combat, and after she was subdued, she was set free with the remainder. But it may perhaps be said, that she was the assailant, and that resistance was an act of mere defence and self-preservation. Let us then pursue the matter a step further. Our ships had blockaded the Tripolitan Admiral in the bay of Gibralter; suppose he had attempted to make his way out, without first firing upon them; if permitted to do it, the blockade was a farce; if hindered by force, this would have amounted to more than a mere act of defence; and if a combat had ensued, we should then have seen a perfect illustration of the unintelligible right, to take the life but not to abridge the liberty, or capture the property of an enemy.—Let us suppose an invasion of our territory, previous to a declaration of war by Congress. The principle avowed in the Message, would authorize our troops to kill those of the invader, if they should come within the reach of their bayonets, perhaps to drive them into the sea, and drown them; but not to disable them from doing harm, by the milder process of making them prisoners, and sending them into confinement. Perhaps it may be replied, that the same end would be answered by disarming, and leaving them to starve. The merit of such an argument would be complete by adding, that should they not be famished, before the arrival of their ships with a fresh supply of arms, we might then, if able, disarm them a second time, and send them on board their fleet, to return safely home.

The inconvenience of the doctrine in practice, is not less palpable than its folly in theory. In every case it presents a most unequal warfare.—In the instance which has occurred, the vanquished Barbarian got off with the loss of his guns. Had he been victorious, those Americans, whose lives might have been spared, would have been doomed to wear out a miserable existence in slavery and chains. Substantial benefits would have rewarded his success ; while on our side, life, liberty and property, were put in jeopardy, for an empty triumph. This, however, presents, a partial inconvenience—cases may arise in which evils of a more serious and comprehensive nature would be the fruits of this visionary and fantastical principle.—Suppose that, in the recess of Congress, a foreign maritime power should unexpectedly declare war against the United States, and send a fleet and army to seize Rhode-Island, in order from thence to annoy our trade and our sea port towns : Till the Congress should assemble and declare war, which would require time, our ships might, according to the hypothesis of the Message, be sent by the President to fight those of the enemy as often as they should be attacked, but not to capture and detain them ; if beaten, both vessels and crews would be lost to the United States ; if successful, they could only disarm those they had overcome, and must suffer them to return to the place of common rendezvous, there to equip anew, for the purpose of resuming their depredations on our towns and our trade.

Who could restrain the laugh of derision at positions so preposterous, were it not for the reflection that in the first magistrate of our country, they cast a blemish on our national character ? What will the world think of the fold when such is the shepherd ? LUCIUS CRASSUS.

THE EXAMINATION.

NUMBER 2.

THE next most prominent feature in the Message, is the proposal to abandon at once, all the internal revenue of the country. The motives avowed for this astonishing scheme are, that "there 'is *reasonable ground of confidence* that this part of 'the revenue may now be safely dispensed with—'that the remaining sources will be sufficient to 'provide for the support of government, to *pay* 'the *interest* of the public debt, and to *discharge* 'the *principal* in shorter periods than the *laws* or 'the *general expectation* had contemplated—and 'that though wars and untoward events might 'change this prospect of things, and call for 'expences which the *impost* could not meet—yet 'that sound principles would not justify our tax-'ing the industry of our fellow-citizens to *accumu-'late treasure* for wars to happen we know not 'when, and which might not perhaps happen but 'from the *temptations offered* by that treasure."

If we allow these to be more than ostensible motives, we shall be driven to ascribe this conduct to a deficiency of intellect, and to an ignorance of our financial arrangements, greater than could have been suspected: if but ostensible, it is then impossible to trace the suggestion, to any other source than the culpable desire of gaining or securing popularity at an immediate expence of public utility, equivalent, on a pecuniary scale to a *million of dollars annually; and at the greater expence

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* This is taken as a round number. The present nett product, including the duties on stamps, seems to be between eight and nine hundred thousand. Very speedily, by the natural progress of the country, they would amount to a million, and soon after exceed it. A million therefore is a moderate ratio.

of a very serious invasion of our system of public credit.

That these at least, are the certain consequences of the measure, shall be demonstrated by arguments, which are believed to be unanswerable.

To do this the more effectually, it is necessary to premise, that some of the revenues now proposed to be relinquished, are, with every solemnity of law, pledged for paying the interest and redeeming the principal of our public debt, foreign and domestic. As to the interest, and such parts of the principal, as by the original constitution of the debt, are payable by annual instalments, the appropriation is absolute: As to the residue, it is qualified. On the 3d of March 1795, was passed an act of Congress which forms a main pillar in the fabric of our public debt—which, maturing and perfecting the establishment of a *Sinking Fund*, endeavors, with peculiar solicitude, to render it adequate, effectual and inviolable: by the 8th section of this act it is provided, "That *all surplusses* of 'the revenue, which *shall remain at the end* of any 'year, and which at the next session of Congress 'shall not be otherwise appropriated or reserved 'by law, shall *ipso facto* become a part of the "*Sinking Fund.*" This fund, by other provisions of the same act, is *vested* in commissioners *in trust*, to be applied to the redemption of the debt, by reimbursement or by purchase, until the whole shall be extinguished: and the faith of the United States is expressly engaged, that the monies which are to constitute the fund, shall inviolably remain so appropriated and vested, until the redemption of the debt shall be completely effected.

The simple statement of these provisions goes far to confirm the character which we have given to the proposition. But a distinct examination of

the reasons by which it is supported, will, when taken in connection with those provisions, place beyond doubt, its absurd and pernicious tendency.

The first inducement offered for relinquishing the internal revenue, is a *reasonable ground of confidence*, that it may safely be dispensed with.

When it is considered that we are in the very crisis of an important change of situation ; passing from a state in which neutrality had procured to our commerce, and to the revenues depending on it, a great artificial increase——with good reason to look for a diminution, and without satisfactory *data* to enable us to fix the extent of this diminution : can any thing be more rash, more empirical, than voluntarily to abandon a valuable and growing branch of income of which we are already in possession ? Can it be said, that merely "*a reasonable ground* of confidence," is a sufficient warrant for so important a surrender ? Surely we ought to have been told that there was at least a moral certainty of the fact. But even this would not have been deemed enough by a prudent statesman. Nothing less than *experimental certainty* ought to have been relied upon.—There was no pressure of circumstances making it proper to precipitate the measure.—It would have been ridiculous to pretend that the burden is so heavy, as to demand immediate relief ; and without this incentive to relinquishment, experience ought undoubtedly to have been taken as the only fit and sure guide.

Not only is it problematical what the present duties on imports will, for succeeding years produce ; but it is in a degree questionable, whether it may not be found necessary to reduce the rates. That they are now high, when compared with the commercial capital of our country, is not to be denied, and whether they may not be found too

high for a beneficial course of our trade, is yet to be decided by experiment. The latter augmentations of the rates of duty, were made at times and under circumstances in the situations of this and of other countries, which forbid us to regard past experience as conclusive on the point.

Should it be said in answer, that the revenues can hereafter be renewed, if on trial it shall be found that they have been prematurely abandoned, the decisive reply is, that this is to invert the natural order of just reasoning. Were it now the question, whether such revenues should be created, in anticipation of a possible deficiency, the correct answer would be, let experiment first ascertain the necessity : as they already exist, on a question to abolish them, the answer equally ought to be, let experience first shew them to be unnecessary.

But how can they be unnecessary ? Let us grant that the remaining sources will be equal to the purposes enumerated in the Message, does it follow that it will not still be wise to retain the internal revenue ? Is it not desirable that government should have it in its power to discharge the debt faster than may have been contemplated ? Is not this a felicity in our situation which ought to be improved ? A precious item in the public fortune which ought not rashly to be squandered ? But it is not even true that the laws have exclusively contemplated a definite period for the ultimate redemption of the entire debt. They have only made a determinate provision for its extinguishment, at all events, within a given term of years : but, anxious to shorten the period, they, in the clause which has been quoted respecting the surplusses of revenue, have made an auxiliary provision for the purpose of abridging that term. The

Message, while it goes to impair the efficacy of the principal provision, proposes formally to renounce the auxiliary, and thus to disappoint the provident care of the laws to accelerate the discharge of the debt.

How is this reconcileable with the wanton and unjust clamors heretofore vented against those who projected and established our present system of public credit; charging them with a design to perpetuate the debt, under the pretext that *a public debt was a public blessing?* It is not to be forgotten, that in these clamors Mr. Jefferson liberally participated! Now, it seems, the tone is entirely changed. The past administrations, who had so long been calumniated by the imputation of that pernicious design, are of a sudden discovered to have done too much for the speedy discharge of the debt, and its duration is to be prolonged, by throwing away a part of the fund destined for its prompt redemption.—Wonderful union of consistency and wisdom!

Before we yield our approbation to the proposal, we ought to have a guarantee for the continuance of our peace, long enough to give effect to the leisurely operation of that residue of the fund which it is intended to retain: else war, which never fails to bring with it an accumulation of debt, may intervene, and we may then rapidly hasten to that period when the exigencies of government may render it necessary to appropriate too large a portion of the *earnings of labor*. To guard against so unfortunate a result, towards which there is always too great a tendency in the affairs of nations, our past administrations have evinced a deep foresight, and exercised a truly patriotic care. Unhappy will it be, if any succeeding projector shall be permitted to frustrate their salutary plan.

It has been seen, that the Message anticipates and attempts to answer objections to the dereliction of revenue: it is said, that, "sound prin-'ciples will not permit us to tax the industry of 'our citizens to accumulate treasure for wars to 'happen we know not when, and which might not 'perhaps happen but for the temptations offered 'by that treasure." Unless, however, the *accumulation of treasure* be the necessary consequence of retaining the revenue, this argument is evidently futile. But the President had only to open our statute book to learn, that this consequence is chimerical. All future surplusses of revenue, being already eventually appropriated to the discharge of the public debt, it follows that till the whole debt shall have been extinguished, there could be no *accumulation of treasure*—no spoil from that source to tempt the rapacity of a greedy invader. Here we fix the charge of ignorance of our financial arrangements: to which there can be no alternative but a deliberate design to delude the people. Between the two, let the worshippers of the Idol make their option.

LUCIUS CRASSUS.

THE EXAMINATION.

NUMBER 3.

HAD our laws been less provident than they have been, yet must it give us a very humble idea of the talents of our President as a statesman, to find him embarrassed between an absolute abandonment of revenue, and an inconvenient accumula-

tion of treasure. Pursuing the doctrine professed by his *sect*, that our public debt is a national *curse*, which cannot too promptly be removed, and adhering to the assurance which he has virtually given,* that a sponge, *the favorite instrument*, shall not be employed for the purpose, how has it happened that he should have overlooked the simple and obvious expedient of using the supposed excess of income as a remedy for so great a mischief?

After all we have heard in times past, it would ill become either the head, or any member, of the *orthodox sect* to contend, that a too rapid reimbursement of the debt might be attended with evils. In curtesey however, this shall be supposed to be urged by some new convert, who has not entirely shaken off the prejudices of former modes of thinking; and it shall be examined, whether this argument will afford a justification of the measure recommended.

It shall not be denied, that the immediate payment of our whole debt, if practicable, would be likely to be injurious in various ways. It would, in the first instance produce a money-plethora, (if the phrase may be allowed,) which experience has shewn to be inauspicious to the energies, and especially to the morality and industry of a nation. The quick efflux of this money to pay a considerable part of the debt in the hands of foreigners, and to procure from abroad the means of gratifying an increased extravagance, would, after some time, substitute a too great vacuity to a too great fulness; leaving us to struggle with the bad habits incident to the latter state, and with the em-

* One of the essential principles of government is, "*the 'honest payment of our debts and the sacred preservation of the 'public faith,*"—INAUGURAL SPEECH.

barrassments of a defective circulation. To these, other reasons might be added, which, though equally just and solid, are omitted as being more liable to dispute.

Though an extreme case is here presented, the immediate reimbursement of the entire debt; yet it must be admitted, that the same considerations are applicable in a less degree to a summary, or very rapid repayment by large instalments. But the answer to all this is, that it would have been full time to adopt precautionary measures against evils from such a source, when experience had realized the danger. Till such time it is certainly the highest wisdom to continue the employment of a fund which is already provided, and without overburdening the people, for the all-important purpose of exonerating our nation from debt, and of placing it in a condition, with competent resources to meet future contingencies which may threaten its safety. On the other hand, is it not a mark of the highest improvidence and folly, to throw away an important part of this fund, on the mere speculation that it may possibly be superfluous?

But admitting it to be clearly ascertained, that the fund is greater than is requisite to extinguish the debt, with convenient celerity; does it follow that the excess, if retained, must be suffered to accumulate, and that no different method could have been found to employ it which would have been productive of adequate utility?

Whatever diversity of opinion there may be with regard to military and naval preparations, for the defence and security of the country, there are some things in which all well-informed and reflecting men unite. In order that upon the breaking out of a war there may be a sufficient supply of warlike implements, together with the means of speedily cre-

ating a navy ;—Arsenals, Founderies, Dock-yards, Magazines, (especially of materials for the construction and equipment of ships) are by all deemed eligible objects of public care. To provide for these objects upon a competent, though moderate scale, will be attended with expence so considerable, as to leave nothing to spare from the amount of our present income. To persons unacquainted with the subject, the quantities of several articles on hand may appear ample ; but to good judges there is hardly any one class of supplies, which will not be thought to require much augmentation. As far as a navy is concerned, the deficiency is palpable.

If Dock-yards are to be established in earnest, they ought certainly to be well protected. For this purpose, fortifications of a substantial and durable nature, very different from the temporary shifts hitherto adopted, ought to be erected. And if the President will enquire into the cost of even these trifling constructions, in the instances where they have been managed with all practicable economy, he will become convinced that the erection of proper works would call for an expenditure forbidding the supposition of a superfluity of revenue.

In addition to objects of national security, there are many purposes of great public utility to which the revenues in question might be applied. The improvement of the communications between the different parts of our country is an object well worthy of the national purse, and one which would abundantly repay *to labor* the portion of its *earnings*, which may have been borrowed for that purpose. To provide roads and bridges is within the direct purview of the constitution. In many parts of the country, especially in the Western Territory, a matter in which the Atlantic States are equally interested, aqueducts and canals would also be fit subjects

of pecuniary aid, from the general Government. In France, England, and other parts of Europe, institutions exist supported by public contributions, which eminently promote agriculture and the arts; such institutions merit imitation by our government; they are of the number of those which directly and sensibly recompence *labor* for what it lends to their agency.

To suggestions of the last kind, the adepts of the new-school have a ready answer: *Industry will succeed and prosper in proportion as it is left to the exertions of individual enterprize.* This favorite dogma, when taken as a general rule, is true; but as an exclusive one, it is false, and leads to error in the administration of public affairs. In matters of industry, human enterprize ought, doubtless, to be left free in the main; not fettered by too much regulation; but practical politicians know that it may be beneficially stimulated by prudent aids and encouragements on the part of the Government. This is proved by numerous examples too tedious to be cited; examples which will be neglected only by indolent and temporising rulers, who love to loll in the lap of epicurean ease, and seem to imagine that to govern well, is to amuse the wondering multitude with sagacious aphorisms and oracular sayings.

What has been observed, is sufficient to render it manifest, that, independent of the extinguishment of the debt, the revenues proposed to be yielded up, would find ample and very useful employment for a variety of public purposes. Already in possession of so valuable a resource; having surmounted the difficulties, which, from the opinions and habits of our citizens, obstruct, in this, more than in any other country, every new provision for adding to our public income; certainly without a colourable pretence of their being a grievous or up-

due pressure on the community—how foolish will it be to resign the boon, perhaps in a short time to be compelled again to resort to it; and for that purpose to hazard a repetition of the obstacles which have been before encountered and overcome? obstacles which gave birth to one insurrection, and may give birth to another? Infatuated must be the councils from which so injurious a project has proceeded!

But admitting the position, that there is an excess of income which ought to be relinquished, still the proposal to surrender the *internal* revenue is impolitic. It ought to be carefully preserved, as not being exposed to the casualties, incident to our intercourse with foreign nations, and therefore the most certain—It ought to be preserved, as reaching to descriptions of persons who are not proportionably affected by the impost, and as tending for this reason, to distribute the public burden more equitably—It ought to be preserved, because if revenue can really be spared, it is best to do it in such a manner as will conduce to the relief or advancement of our navigation and commerce. Rather let the tonnage duty on American vessels be abolished, and let the duties be lessened on some particular articles on which they may press with inconvenient weight. Let not the merchant be provoked to attempt to evade the duties, by the sentiment that his ease or interest is disregarded, and that his capital alone is to be clogged and incumbered by the demands of the treasury.

But who and what are the Merchants, when compared with the patriotic votaries of whiskey in Pennsylvania and Virginia?

LUCIUS CRASSUS.

THE EXAMINATION.

NUMBER 4.

IT is matter of surprize to observe a proposition to diminish the revenue, associated with intimations which appear to contemplate war. The suggestions in the Message respecting the Barbary States, plainly enough imply, that treaties are found to be too feeble cords to bind them; and that a resort to coercive means will probably be requisite to enforce a greater sense of justice towards us. Accordingly, as a comment on this hint, we have seen a resolution brought into the House of Representatives, authorising the President to take measures effectually to protect our commerce against those States. Believing it to be a sound position, that these predatory nations will never be brought to respect sufficiently the rights of this country, whether derived from nature or from compact, without first being made to feel its power; there is no disposition to condemn the efficacious employment of force. Yet, considering the maxims by which those States are governed, and the obstinacy which they have evinced upon other occasions, it is likely that a policy of this sort will be attended with considerable, and with no very temporary expence. This alone is conceived to be a conclusive reason against parting with any portion of our present income: nothing could be less advisable, at a moment when there is the prospect, if not the project of a general rupture with those powers.

Hitherto the proposal for sacrificing the internal revenue, has been tried almost wholly by the test of expediency;—it is time to put it to a severer test;—that of *Right*. *Can the proposed abolition take effect without impairing the* PUBLIC FAITH?

This is a question of infinite moment to the character of our Government—to the prosperity of our nation. If it is to be answered in the negative, it must be matter of profound regret, that a proposal which could give rise to it, should have come from the first Magistrate of the United States.

It is hardly necessary to premise, by way of explanation, that *to pledge or appropriate* funds for a public debt, is, in effect, to *mortgage* them to the public creditors *for their security*. Retracing our financial system to its commencement, we find the impost and the excise on distilled spirits, repeatedly and positively pledged, first, for the payment and interest of the debt, next, for the reimbursement of certain instalments of the principal. It is true, the appropriation is qualified by the words, "so much as may be necessary," but the *public faith* is engaged in express terms, that *both the funds* shall *continue* to be levied and collected, until the whole debt shall be discharged; with the single reserve, that the government shall be at liberty to *substitute* other funds of *equal amount*. It follows that these *two items* of revenue constitute a *joint* fund for the security of the public creditor, co-extensive in duration with the existence of any portion of the debt: and it is to be inferred, that the Government, contemplating the possibility of a deficiency in *one*, intended that the *other* should serve as an *auxiliary*, and that the *co-operation* of the *two* should effectually guard the creditor against the fluctuations and casualties to which *either singly*, might be exposed. Anticipating, however, the possibility that the one or the other, in whole or in part, might in practice be found inconvenient, a right was reserved to *exchange* either for an *adequate* substitute. But it is conceived, that this does not imply the right to exchange *the one* for *the other*. The effect would be

essentially different in the two cases: in the first there would always be *two funds*, aggregately of the same or similar force and value, to secure the creditor; in the last there would be *only one*: from being double, the security would become single.

This mode of reasoning is only one, upon which the rights and the interests of the creditors can safely rest: It is plain and intelligible, and avoids the danger of erroneous speculations about the *separate sufficiency* of the respective funds. Admitting, however, for the sake of the argument, that this is too rigid a construction of the contract, and that when *one* of the *two* funds should have acquired a stable increase, which would render it equal to the purpose of the pledge, it might then be made to stand in the place of both: yet, surely, neither the purity of the public faith, nor the safety of the creditor, will endure the appellation of this principle to any other, than to an ascertained result. Neither, certainly, will tolerate, that merely a *reasonable ground of confidence* shall authorise so material an alteration in the essence of the security which protects the debt.

The foregoing reasoning as to the question of *Right*, may be further elucidated by a particular provision in the Act* which introduced the excise on distilled spirits. After a *permanent* appropriation of the proceeds of the tax to the interest of the debt, it provides, that the surplus if any there shall be, at the end of each year *shall be* applied to the reduction of the principal; unless the surplus or any part of it should be required for public exigencies of the United States, and should be so appropriated by special "Acts of Congress." While at this early period of our finances it was not thought expedient to appropriate this surplus *absolutely* to the *Sinking*

* Passed March 3d, 1791.

Fund, it was contemplated that it should not be diverted, except for *public exigencies*. Gratuitously to relinquish it, is therefore contrary to the letter as well as to the spirit of the original institution of the fund. The like observations, though with less force, apply to the provision noticed in another number, respecting the surplusses of the revenue generally, which, as we have seen, are all appropriated to the Sinking Fund. At the session of Congress immediately succeeding any year in which such surplusses may accrue, they may be specially *appropriated* or *reserved* by law, for other purposes; but, if this be not done, they are then to go of course to the Sinking Fund. To *appropriate* or to *reserve*, plainly, can never mean to *relinquish*. The true meaning of the provision appears, therefore, to be that, though Congress, under the restriction expressed as to time, may *appropriate* or *reserve* these surplusses for other objects of the public service, yet if not wanted for such other objects, they shall continue to enure to the fund for the reduction of the debt, so long, as by the laws regulating their duration, they are continued to be levied.

Thus, on whatever side it is viewed, there is a temerity and a levity in the proposition which confounds and amazes.—If, unhappily, it shall receive the sanction of Congress, there will remain nothing in principle of our system of Public Credit—nothing on which the confidence of the creditor can safely repose. The precedent of a fatal innovation will have been establised, and its extension to a total annihilation of the security, would be a step, not much more violent, than that by which the inroad had commenced. But it is devoutly to be hoped, that the delirium of party spirit will not so far transport the *Legislative* Representatives of the nation, as to

induce *them* to put the seal to a measure, as motiveless—as precipitate—as impolitic—as *faithless*—as could have been dictated, even by a deliberate hostility to the vital principles of our national credit. Peculiarly the guardians of the PUBLIC FAITH, and of the *Public Purse*, they surely will not consent to betray the one, and impoverish the other, though an abject and criminal complaisance.

It is a fact not unknown to himself, that abroad as well as at home, a diffidence has been entertained of the opinions and views of the person now at the head of our government, with regard to our system of public credit. This undoubtedly ought to have been with him a strong reason for caution, especially at so early a stage of his administration, as to any step which might strengthen that diffidence, which might be in the least equivocal in its tendency. Nor ought it to have been overlooked, that the interest of the State, and a regard for his own reputation demanded this caution. The appearance of instability in the plans of a government, particularly respecting its finances, can never fail to make injurious impressions.—To a government, the character of which has not yet been established by time, the example of sudden and questionable innovations, may be expected to be in the highest degree detrimental. Prudent men every where are apt to take the alarm at great changes not manifestly beneficial and proper—a disposition which has been much increased by the terrible events of the present revolutionary æra. Yet, disregarding these salutary and obvious reflections, the President has ventured, in the very infancy of his administration, upon the bold and unjustifiable step of recommending to the legislative body, a renunciation of the whole *internal revenue* of the country ; though the nation is at this moment encumbered with a considerable public

debt; and though that very revenue, is, by the existing laws, an *established fund* for its discharge.

What then are we to think of the ostentatious assurance in the Inaugural Speech as to the preservation of PUBLIC FAITH? Was it given merely to amuse with agreeable, but deceptive sounds? Is it possible that it could have been intended to conceal the insidious design of aiming a deadly blow at a System which was opposed in its origin, and has been calumniated in every stage of its progress?

Alas! How deplorable will it be, should it ever become proverbial, that a President of the United States, like the *Wierd Sisters* in Macbeth, "*Keeps his promise to the ear, but breaks it to the sense*"!

LUCIUS CRASSUS.

THE EXAMINATION.

NUMBER 5.

IN the rage for change, or under the stimulus of a deep-rooted animosity against the former administrations, or for the sake of gaining popular favour by a profuse display of extraordinary zeal for economy, even our judiciary system has not passed unassailed. The attack here is not so open as that on the revenue; but when we are told that the states individually have "*principal* care of our persons, our 'property and our reputation, constituting the great 'field of human concerns; and that therefore *we may 'well doubt whether our organization is not too compli-'cated, too expensive;* whether offices and officers have 'not been multiplied unnecessarily, and sometimes 'injuriously to the service they were meant to pro-'mote;" when afterwards it is observed that "the

'Judiciary System will *of course* present itself to the 'contemplation of Congress;" and when it appears that pains had been taken to form and communicate a numerical list of all the causes decided since the first establishment of the courts, in order that Congress might be able to judge of the proportion which the institution bears to the business—with all these indications, it is not to be misunderstood that the intention was unequivocally to recommend *material* alterations in the system.

No bad thermometer of the capacity of our Chief Magistrate, for government, is furnished by the rule which he offers for judging of the utility of the Federal Courts; namely, the exact *number* of causes which have been by them decided. There is hardly any stronger symptom of a pigmy mind, than a propensity to allow greater weight to *secondary* than to *primary* considerations.

It ought at least to have been adverted to, that if this circumstance were a perfect criterion, it is yet too early to apply it, especially to the courts recently erected: And it might have merited reflection, that it would have been prudent to wait for a more advanced period of the presidental term, to ascertain what influence the great change which has lately happened in our *public functionaries* may have on the confidence, which in many parts of the Union has heretofore been reposed in the State Courts, so as to prevent a preference of those of the United States.

But, to enable us duly to appreciate the wisdom of the projected innovation, it is necessary to review the objects which were designed to be accomplished by the arrangement of the Judiciary power, as it is seen in the constitution, and to examine the organization which has been adopted, to give effect to those objects.

It is well known to all who were acquainted with

the situation of our public affairs when the constitution was framed, and it is to be inferred from the provisions of the instrument itself, that the objects contemplated, were 1st. To provide a faithful and efficient organ for carrying into execution the laws of the United States, which otherwise would be a *dead letter*. 2d. To secure the fair interpretation and execution of our treaties with foreign nations. 3d. To maintain harmony between the individual states; not only by an independent and impartial mode of determining controversies between them, but by frustrating the effects of partial laws in any one, injurious to the rights of the citizens of another. 4th. To guard generally against invasions of property and right, by fraudulent and oppressive laws of particular states, enforced by their own tribunals. 5th. To guard the rights and conciliate the confidence of foreigners, by giving them the option of tribunals created by and responsible to the general government; which, having the immediate charge of our external relations, including the care of our national peace, might be expected to be more tenacious of such an administration of justice as would leave to the citizens of other countries no real cause of complaint. 6th. To protect reciprocally the rights and inspire mutually the confidence of the citizens of different states in their intercourse with each other, by enabling them to resort to tribunals so constituted, as to be essentially free from local bias or partiality. 7th To give the citizens of each state a fair chance of impartial justice through the medium of those tribunals, in cases in which the titles to property might depend, on the conflicting grants of different states.—These were the immensely important objects to be attained by the institution of an adequate Judiciary power, in the government of the United States. Nor did its institution depend upon mere

speculative opinion, though indeed, even that would have been sufficient to indicate the expediency of the measure: but experience had actually, in a variety of ways, demonstrated its necessity.

The treaties of the United States had been infracted by state laws, put in execution by state judicatories. The rights of property had been invaded by the same means, in numerous instances, as well with respect to foreigners as to citizens; as well between citizens of different states as between citizens of the same state. There were many cases in which lands were held or claimed under adverse grants of different states, having rival pretensions; and in respect to which, the local tribunals, even if not fettered by the local laws, could hardly be expected to be impartial. In several of the states the courts were so constituted as not to afford sufficient assurance of a pure, enlightened and independent administration of justice; an evil which in some of them still continues. From these different sources serious mischiefs had been felt. The interests of the United States, in their foreign concerns, had suffered; their reputation had been tarnished; their peace endangered; their mutual harmony had been disturbed or menaced; creditors in numerous instances had been ruined or very much injured: confidence in pecuniary transactions had been destroyed, and the springs of industry had been proportionably relaxed. To these circumstances, as much, perhaps, as any other that accompanied a defective social organization, are we to attribute that miserable and prostrate situation of our affairs, which immediately before the establishment of our present National Constitution, filled every intelligent lover of his country, with affliction and mortification. To the institution of a competent judiciary, little less than to any one provision in

that constitution, is to be ascribed the rapid and salutary renovation of our affairs, which succeeded.

The enumeration* of the component parts of the Judicial power, in the constitution, has an evident eye to the several objects which have been stated. And considering their vast magnitude, no sound politician will doubt that the principal question, with the administration, ought to be, how to give the greatest efficacy to this essential part of the system; in comparison with which the more or less of expence, must be a matter of trivial moment. The difference of expence between an enlarged and a contracted plan, may be deemed an atom in the great scale of national expenditure. The fulfilment of the important ends of this part of our constitutional plan, though with but a small degree of additional energy, facility, or convenience, must infinitely overbalance the consideration of such difference of expence.

The number of causes which have been tried in these courts, as already intimated, can furnish but a very imperfect test, by which to decide upon their utility or necessity. Their existence alone has a powerful and salutary effect. The liberty to use them, even where it is not often exercised, inspires confidence in the intercourse of business. They are viewed as beneficent guardians, whose protection

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* "SEC. II. The judicial power shall extend to all cases in law and equity, arising under this constitution; the laws of the United States and treaties made; or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof; and foreign states, citizens or subjects."

may be claimed when necessary. They induce caution in the state courts, and promote in them, a more attentive, if not a more able administration of justice. Though in some districts of the union, the federal courts are seldom resorted to, in others they are used in an extensive degree, particularly as between foreigners and citizens, and between citizens of different states.

That their organization throughout the United States ought to be uniform, will not be denied, and it is evident that it ought to be regulated by the situation of those parts in which a greater degree of employment denotes the courts to be most necessary: Of consequence, if the quantity of business were at all a guide, the scenes in which there is the greatest employment for the federal courts, ought to furnish the rule of computation; it ought not to be sought for in the aggregate of business, throughout the union.—In reference to this point, it is likewise material to observe that, from the manner in which the federal courts were constituted, previous to the last arrangement, *the organization* of the state courts was so much better adapted to expedition, as to afford a strong motive for giving them a preference. The establishment of circuit courts, as now modified, will vary that circumstance, and thus attract more business; but it is evident that it must require a course of years fully to exemplify its operation. To attempt, therefore, to draw important inferences from the short experience hitherto had, is worse than puerile.

LUCIUS CRASSUS.

THE EXAMINATION.

NUMBER 6.

IN answer to the observations in the last number, it may perhaps be said, that the Message meant nothing more than to condemn the recent *multiplication* of Federal Courts, and to bring them back to their original organization: considering that as adequate to all the purposes of the Constitution; to all the ends of justice and policy.

Towards forming a right judgment on this point, it may be of service to those who are not familiar with the subject, to state briefly what was the former, and what is the present establishment.

The former consisted of one Supreme Court with six judges, who, twice a year made the tour of the United States distributed into three circuits, for the trial of causes arising in the respective districts of each circuit; and of fifteen District Courts, each having a single Judge. The present consists of one Supreme Court with the like number of judges, to be reduced on the first vacancy happening, to five; of six Circuit Courts, having three distinct Judges each, excepting one circuit, which has only a single Circuit Judge; and of twenty-two District Courts, with a Judge for each as before: In both plans, the Supreme Court is to hold two terms at the seat of Government, and the Circuit Courts are to be holden twice a year in each district: The material difference in the two, as it respects the organs by which they are executed, is reducible to the creation of twenty-three additional Judges; sixteen for the six Circuit Courts, seven for the superadded District Courts, and the addition of the necessary, clerks, marshals, and subordinate officers of seven

Courts. This shews at a single view, that the difference of expence, as applied to the United States, is of trifling consideration.

But here an enquiry naturally presents itself; why was the latter plan substituted to the former more economical one? The solution is easy and satisfactory. The first was inadequate to its object, and incapable of being carried into execution. The extent of the United States is manifestly too large for the due attendance of the six Judges in the Circuit Courts. The immense journies they were obliged to perform, kept them from their families for several successive months in the year; this rendered the office a grievous burden, and had a strong tendency to banish or exclude men of the best talents and characters, from these important stations. It is known to have been no light inducement with one Chief Justice, whose health was delicate, to quit that office for another attended with less bodily fatigue; and it is well understood that other important members of the Supreme Court were prepared to resign their situations, if there had not been some alteration of the kind which has taken place. It was also no uncommon circumstance for temporary interruptions in the health of particular Judges, of whom only one was attached to a Circuit, to occasion a failure in the sessions of the Courts; to the no small disappointment, vexation and loss of the suitor. At any rate the necessity of visiting, within a given time, the numerous parts of an extensive circuit, unavoidably rendered the sessions of each Court so short, that, where suits were in any degree multiplied, or intricate, there was not time to get through the business with due deliberation. Besides all this, the incessant fatigues of the judges of the Supreme Court, and their long and frequent absences from home, prevented that continued at-

tention to their studies, which even the most learned will confess to be necessary for those, entrusted in the last resort, with questions frequently novel, always of magnitude, affecting not only the property of individuals, but the rights of foreign nations, and the constitution of the country.

For these reasons, it became necessary either to renounce the Circuit Courts, or to constitute them differently : the latter was preferred. The United States were divided into six Circuits, with a proper number of Judges to preside over each. No man of discernment will pretend that the number of Circuits is too great. Surely three states, forming an area of territory equal to that possessed by some of the first powers of Europe, must afford a quantity of business sufficient to employ three Judges on a Circuit, twice a year ; and certainly not less than three will suffice for the dispatch of business, whether the number of causes be small or great. The inconsiderable addition made to the number of the District Courts will hardly excite criticism, and does not, therefore, claim a particular discussion, nor will their necessity be generally questioned. They are almost continually occupied with revenue, and admiralty causes, besides the great employment collaterally given to the Judges, in the execution of the Bankrupt Act, which probably must increase instead of being diminished.

Perhaps it may be contended, that the Circuit Courts ought to be abolished altogether, and the business for which they are designed, left to the State Courts, with a right of appeal to the Supreme Courts of the United States. Indeed, it is probable that this was the true design of the intimation in the Message : *A disposition to magnify the importance of the particular States, in derogation from that of the United States*, is a feature in that communication,

not to be mistaken. But to such a scheme there are insuperable objections. The right of appeal is by no means equivalent to the right of applying, in the first instance, to a Tribunal agreeable to the suitor. The *desideratum* is to have impartial justice, at a moderate expence, administered "promptly 'and without delay;" not to be obliged to seek it through the long, and tedious, and expensive process of an appeal. It is true, that in causes of sufficient magnitude, an appeal ought to be open; which includes the possibility of going through that process; but when the Courts of original jurisdiction are so constituted as not only to deserve, but to inspire confidence, appeals, from the inevitable inconvenience attached to them, are exceptions to the general rule of redress; where the contrary is the situation, they become the general rule itself. Appeals will then be multiplied to a pernicious extent; while the difficulties to which they are liable, operate in numerous instances, as a preventative of justice, because they fall with most weight on the least wealthy suitor. It is to be remembered, that the cases in which the Federal Courts would be preferred, are those, where there would exist some distrust of the State Courts; and this distrust would be a fruitful source of appeals. To say that there could be no good cause for this distrust, and that the danger of it is imaginary, is to be wiser than experience, and wiser than the constitution. The first officer of the Government, when speaking in his official capacity, has no right to attempt to be thus wise. His duty exacts of him that he should respectfully acquiesce in the spirit and ideas of that instrument under which he is appointed.

The detail would be invidious, perhaps injurious; else it would be easy to shew, that however great the confidence to which the tribunals in some of the

States are entitled, there is just cause for suspicion as to those of others; and that in respect to a still greater number, it would be inexpedient to delegate to them, the care of interests which are specially and properly confided to the government of the United States.

The plan of using the State Courts as substitutes for the Circuit Courts of the Union, is objectionable in another view. The citizens of the United States have a right to expect from those who administer our government, the efficacious enjoyment of those privileges, as suitors, for which the constitution has provided. To *turn them round*, from the enjoyment of those privileges, in originating their causes, to the eventual and dilatory resource of an appeal, is in a great degree to defeat the object contemplated. This is a consideration of much real weight, especially to the merchants in our commercial States.

In the investigation of our subject, it is not to be forgotten, that the right to employ the agency of the State Courts for executing the laws of the Union, is liable to question, and has, in fact, been seriously questioned. This circumstance renders it the more indispensible, that the permanent organization of the Federal Judiciary should be adapted to the prompt and vigorous execution of those laws.

The right of Congress to discontinue judges once appointed, by the abrogation of the Courts for which they were appointed, especially as it relates to their emoluments, offers matter for a very nice discussion, but which shall now be only superficially touched.

On the one hand, it is not easy to maintain that Congress cannot abolish Courts, which having been once instituted, are found in practice, to be inconvenient and unnecessary: On the other, if it may be done, so as to include the annihilation of existing Judges, it is evident that the measure may be used

to defeat that clause of the Constitution, which renders the duration and the emoluments of the judical office, coextensive with the good behaviour of the officer; an object essential to the independence of the Judges, the security of the citizen, and the preservation of the government.

As a medium which may reconcile opposite ideas, and obviate opposite inconveniencies, it would perhaps, be the best and safest practical construction to say, that though Congress may abolish the Courts, yet shall the actual Judges retain their character and their emoluments, with the authorities of office, so far as they can be exercised elsewhere than in the courts. For this construction, a precedent exists in the last arrangement of the Judiciary. Though the number of the Judges of the Supreme Court is reduced from six to five, yet the *actual* reduction is wisely deferred to the *happening of a vacancy*. The expence of continuing the salaries of the existing incumbents, cannot prudently, be put in competition with the advantage of guarding from invasion, one of the most precious provisions in the Constitution. Nor ought it to be without its weight, that this modification will best comport with good faith, on the part of Government, towards those who had been invited to accept offices, to be held, not by an uncertain tenure, but during *good behaviour*.

Weighing maturely all the very important and very delicate considerations, which appertain to the subject, would a wise or prudent statesman hazard the consequences of immediately unmaking, at one session, Courts and Judges, which had only been called into being at the one preceding? Delectable indeed must be the work of disorganization, to a mind which can thus rashly advance in its prosecution!—Infatuated must that people be, who do not open their eyes to projects so intemperate—so mis-

chievous!—Who does not see what is the ultimate object? *Delenda est Carthaga*—Ill-fated Constitution, which Americans had fondly hoped would continue for ages, the guardian of public liberty, the source of national prosperity!

LUCIUS CRASSUS.

[This subject is resumed and more fully discussed afterwards in Nos. 12, 13, 14, 15, and 16.]

THE EXAMINATION.

NUMBER 7.

THE next most exceptionable feature in the Message, is the proposal to abolish all restriction on naturalization, arising from a previous residence. In this the President is not more at variance with the concurrent maxims of all commentators on popular governments, than he is with himself. The Notes on Virginia are in direct contradiction to the Message, and furnish us with strong reasons against the policy now recommended. The passage alluded to is here presented: Speaking of the *population* of America, Mr. Jefferson says, "Here I will beg 'leave to propose a doubt. The present desire of 'America, is to produce rapid population, by as 'great *importations of foreigners* as possible. *But is 'this founded in good policy?*" "Are there no in-'conveniencies to be thrown into the scale, against 'the advantage expected from a multiplication of 'numbers, by the *importation of foreigners?* It is for 'the happiness of those united in society, to harmo-'nize as much as possible, in matters which they 'must of necessity transact together. Civil gov-'ernment being the sole object of forming societies,

'its administration must be conducted by common 'consent. Every species of government has its 'specific principles: Ours, perhaps, are more pe- 'culiar than those of any other in the universe. *It* '*is a composition of the freest principles of the English* 'Constitution, with others, dreived from natural right 'and reason. To these, nothing can be more op- 'posed than the maxims of absolute monarchies. 'Yet from such, we are to expect the *greatest num-* 'ber of emigrants. *They will bring with them the* 'principles of the governments they leave, imbibed in 'their early youth; or if able to throw them off, it 'will be in exchange for an unbounded licentiousness, 'passing as is usual, from one extreme to another. *It* 'would be a miracle were they to stop precisely at the 'point of temperate liberty. *Their principles with* 'their language, they will transmit to their children. 'In proportion to their numbers, *they will share* 'with us in the legislation. They will infuse *into it* 'their spirit, warp and bias its direction, and render 'it a heterogeneous, incoherent, distracted mass. I 'may appeal to experience, during the present con- 'test, for a verification of these conjectures; but 'if they be not certain in event, are they not possi- 'ble, are they not probable? *Is it not safer to wait* 'with patience for the attainment of any degree of pop- 'ulation desired or expected? May not our govern- 'ment be more homogeneous, *more peaceable, more* 'durable? Suppose 20 millions of republican Amer- 'icans, thrown all of a sudden into France, what 'would be the condition of that kingdom? If it 'would be more turbulent, less happy, less strong, 'we may believe that the addition of half a million 'of foreigners, to our present numbers, would pro- 'duce a similar effect here." Thus wrote Mr. Jef- ferson in 1781—Behold the reverse of the medal. The Message of the President contains the following

sentiments, " A denial of citizenship under a resi-
' dence of 14 years, is a denial to a great propor-
' tion of those who ask it, and controls a policy
' pursued from their first settlement, by many of
' these states, and *still believed of consequence to their*
' *prosperity*. And shall we refuse to the unhappy fu-
' gitives from distress, *that hospitality which the*
' *savages of the wilderness extended to our fathers ar-*
' *riving in this land ?* Shall oppressed humanity find
' no asylum on this globe ? Might not the general
' character and capabilities of a citizen, be safely
' communicated to *every one* manifesting a bona fide
' purpose of embarking his life and fortune perma-
' nently with us ?"

But if gratitude can be allowed to form an excuse for inconsistency in a public character—in *the man of the People* ; a strong plea of this sort may be urged in behalf of our President. *It is certain*, that had the late election been decided entirely by native citizens ; had foreign auxiliaries been rejected on both sides, the man who ostentatiously vaunts that the *doors of public honour and confidence have been burst open to him*, would not now have been at the head of the American nation. Such a proof then of virtuous discernment in the *oppressed fugitives*, had an imperious claim on him to a grateful return, and without supposing any very uncommon share of *self-love*, would naturally be a strong reason for a revolution in his opinions.

The pathetic and plaintive exclamations by which the sentiment is enforced, might be liable to much criticism, if we are to consider it in any other light, than as a flourish of rhetoric. It might be asked in return, does the right to *asylum or hospitality* carry with it the right to *suffrage and sovereignty ?* And what indeed was the courteous reception which was

given to our forefathers, by the savages of the wilderness? When did these humane and philanthropic savages exercise the policy of incorporating strangers among themselves, on their first arrival in the country? When did they admit them into their huts, to make part of their families? and when did they distinguish them by making them their sachems? Our histories and traditions have been more than apocryphal, if any thing like this kind and gentle treatment was really lavished by the much-belied savages upon our thankless forefathers. But the remark obtrudes itself, had it all been true, prudence requires us to trace the history farther, and ask what has become of the nations of savages who exercised this policy? And who now occupies the territory which they then inhabited? Perhaps a lesson is here taught which ought not to be despised.

But we may venture to ask what does the President really mean, by insinuating that we treat aliens coming to this country with inhospitality? Do we not permit them quietly to land on our shores? Do we not protect them equally with our own citizens, in their persons and reputation; in the acquisition and enjoyment of property? Are not our Courts of justice open for them to seek redress of injuries? And are they not permitted peaceably to return to their own country whenever they please, and to carry with them all their effects? What then means this worse than idle declamation?

The impolicy of admitting foreigners to an immediate and unreserved participation in the right of suffrage, or in the sovereignty of a Republic, is as much a received axiom as any thing in the science of politics, and is verified by the experience of all ages. Among other instances, it is known, that hardly any thing contributed more to the downfall of Rome, than her precipitate communication of

the privileges of citizenship to the inhabitants of Italy at large. And how terribly was Syracuse scourged by perpetual seditions, when, after the overthrow of the tyrants, a great number of foreigners were suddenly admitted to the rights of citizenship? Not only does ancient but modern, and even domestic story furnish evidence of what may be expected from the dispositions of foreigners, when they get too early footing in a country. Who wields the sceptre of France, and has erected a despotism on the ruins of her former government? *A foreigner.*—Who rules the councils of our own ill-fated, unhappy country? And who stimulates persecution on the heads of its citizens, for daring to maintain an opinion, and for daring to exercise the rights of suffrage? *A foreigner!*—Where then is the virtuous pride that once distinguished Americans?—Where the indignant spirit which in defence of principle, hazarded a revolution to attain that independence now *insidiously* attacked?

LUCIUS CRASSUS.

THE EXAMINATION.

NUMBER 8.

RESUMING the subject of our last paper we proceed to trace still farther, the consequences that must result from a too unqualified admission of foreigners to an equal participation in our civil and political rights.

The safety of a republic depends essentially on the energy of a common National sentiment; on a uniformity of principles and habits; on the exemption of the citizens from foreign bias, and pre-

judice ; and on that love of country which will almost invariably be found to be closely connected with birth, education and family.

The opinion advanced in the Notes on Virginia is undoubtedly correct, that foreigners will generally be apt to bring with them attachments to the persons they have left behind; to the country of their nativity, and to its particular customs and manners. They will also entertain opinions on government congenial with those under which they have lived ; or if they should be led hither from a preference to ours, how extremely unlikely is it that they will bring with them that *temperate love of liberty*, so essential to real republicanism ? There may, as to particular individuals, and at particular times, be occasional exceptions to these remarks, yet such is the general rule. The influx of foreigners must, therefore, tend to produce a heterogeneous compound ; to change and corrupt the national spirit ; to complicate and confound public opinion ; to introduce foreign propensities. In the composition of society, the harmony of the ingredients is all-important, and whatever tends to a discordant intermixture must have an injurious tendency.

The United States have already felt the evils of incorporating a large number of foreigners, into their national mass ; by promoting in different classes different predilections in favor of particular foreign nations, and antipathies against others, it has served very much to divide the community and to distract our councils. It has been often likely to compromit the interests of our own country in favor of another. The permanent effect of such a policy will be, that in times of great public danger there will be always a numerous body of men, of whom there may be just grounds of distrust ; the suspicion alone will weaken the strength of the na-

tion, but their force may be actually employed in assisting an invader.

In the infancy of the country, with a boundless waste to people, it was politic to give a facility to naturalization; but our situation is now changed. It appears from the last census, that we have increased about one third in ten years; after allowing for what we have gained from abroad, it will be quite apparent that the natural progress of our own population is sufficiently rapid for strength, security and settlement. By what has been said, it is not meant to contend for a total prohibition of the right of citizenship to strangers, nor even for the very long residence which is now a pre-requisite to naturalization, and which of itself, goes far towards a denial of that privilege. The present law was merely a temporary measure adopted under peculiar circumstances and perhaps demands revision. But there is a wide difference between closing the door altogether and throwing it entirely open; between a postponement of fourteen years, and an immediate admission to all the rights of citizenship. Some reasonable term ought to be allowed to enable aliens to get rid of foreign and acquire American attachments; to learn the principles and imbibe the spirit of our government; and to admit of a probability at least, of their feeling a real interest in our affairs. A residence of not less than five years ought to be required.

If the rights of Naturalization may be communicated by parts, and it is not perceived why they may not, those peculiar to the conducting of business and the acquisition of property, might with propriety be at once conferred, upon receiving proof, by certain prescribed solemnities, of the intention of the candidates to become citizens; postponing all political privileges to the ultimate term. To admit

foreigners indiscriminately to the rights of citizens, the moment they put foot in our country, as recommended in the Message, would be nothing less, than to admit the Grecian Horse into the Citadel of our Liberty and Sovereignty.

LUCIUS CRASSUS.

THE EXAMINATION.

NUMBER 9.

THE leading points of the Message have been sufficiently canvassed, and it is believed to have been fully demonstrated, that this communication is chargeable with all the faults which were imputed to it on the outset of the Examination. We have shewn that it has made, or attempted to make, prodigal sacrifices of constitutional energy, of sound principle, and of public interest. In the doctrine respecting war, there is a senseless abandonment of the just and necessary authority of the Executive Department, in a point, material to our national safety. In the proposal to relinquish the internal revenue, there is an attempt to establish a precedent ruinous to our public credit; calculated to *prolong the burthen of the debt*, and to enfeeble and sink the government, by depriving it of resources of great importance to its respectability, to the accomplishment of its most salutary plans, to the power of being useful.—In the attack upon the Judiciary establishment, there is a plain effort to impair that organ of the government: one on which its efficiency and success absolutely depend.—In the recommendation to admit indiscriminately foreign emigrants to the privileges of American citizens, on

their first entrance into our country, there is an attempt to break down every pale which has been erected for the preservation of a national spirit and a national character; and to let in the most powerful means of perverting and corrupting both the one and the other.

This is more than the moderate opponents of Mr. Jefferson's elevation ever feared from his administration; much more than the most wrong-headed of his own sect dared to hope; infinitely more than any one who had read the fair professions in his Inaugural Speech could have suspected. Reflecting men must be dismayed at the prospect before us. If such rapid strides have been hazarded in the very gristle of his administration, what may be expected when it shall arrive at manhood? In vain was the collected wisdom of America convened at Philadelphia.—In vain were the anxious labors of a WASHINGTON bestowed.—Their works are regarded as nothing better than empty bubbles, destined to be blown away by the mere breath of a disciple of *Turgot*; of a pupil of *Condorcet*.

Though the most prominent features of the Message have been pourtrayed, and their deformity exhibited in true colors; there remain many less important traits not yet touched, which, however, will materially assist us in determining its true character. To particularize them with minuteness would employ more time and labor than the object deserves; yet to pass them by, wholly without remark, would be to forego valuable materials for illustrating the true nature of the performance under examination.

There remains to be cursorily noticed, a disposition in our Chief Magistrate, far more partial to the state governments, than to our national government; to pull down rather than to build up our Federal ed-

ifice—to villify the past administrations of the latter—to court for himself popular favor by artifices not to be approved, either for their dignity, their candor or their patriotism.

Why are we emphatically and fastidiously told, that "the States individually have the *principal* care 'of our *persons* our *property* and our *reputation*, '*constituting the great field of human concerns?*" Was it to render the State Governments more dear to us, more the objects of affectionate solicitude? Nothing surely was necessary on this head; they are already the favorites of the people, and if they do not forfeit the advantage by a most gross abuse of trust, must, by the very nature of the objects confided to them, continue always to be so. Was it to prevent too large a portion of affection from being bestowed on the general Government? No pains on this score were requisite; not only for the reason just assigned, but for the further reason that the more peculiar objects of this Government, though no less essential to our prosperity than those of the State Governments, oblige it often to act upon the community in a manner more likely to produce aversion than fondness. Accordingly every day furnishes proof, that it is not the *spoiled child of the many*. On this point the high example of the President himself is pregnant with instruction. Was it to indicate the supreme importance of the State Governments over that of the United States? This was as little useful, as it was correct. Considering the vast variety of humors, prepossessions and localities, which in the much diversified composition of these States, militate against the weight and authority of the general Government, if union under that Government is necessary, it can answer no valuable purpose to depreciate its importance in the eyes of the people. It is not correct; because to the care of the

Federal Government are confided directly, those great, general interests on which all particular interests materially depend : our safety in respect to foreign nations ; our tranquility in respect to each other ; the foreign and mutual commerce of the states ; the establishment and regulation of the money of the country ; the management of our national finances ; indirectly, the security of liberty by the guaranty of a republican form of government to each state ; the security of property by interdicting any state from emitting paper money or from passing laws impairing the obligation of contracts, (from both of which causes the rights of property had experienced serious injury) ; the prosperity of agriculture and manufactures, as intimately connected with that of commerce, and as depending in a variety of ways upon the agency of the general Government : In fine, it is the province of the general Government to manage the greatest number of those concerns in which the provident activity and exertion of *Government* are of most importance to the people ; and we have only to compare the state of our country antecedent to the establishment of the Federal Constitution, with what it has been since, to be convinced that the most operative causes of public prosperity depend upon that Constitution. It is not meant, by what has been said, to insinuate that the state Governments are not extremely useful in their proper spheres ; but the object is to guard against the mischiefs of exaggerating their importance, in derogation from that of the general right. Every attempt to do this, is, remotely, a stab at the Union of these states ; a blow to our collective existence as one people—and to all the blessings which are interwoven with that sacred fraternity.

If it be true, as insinuated, that, " our organiza-

tion is too complicated—too expensive," let it be simplified ; let this, however, be done in such a manner as not to mutilate, weaken, and eventually destroy our present system, but to increase the energy, and insure the duration of our National Government—THE ROCK OF OUR POLITICAL SALVATION.

In this insinuation, and in the suggestion that "offices and officers have been unnecessarily multi-"plied ;" in the intimation that appropriations have not been sufficiently specific, and that the system of accountability to a single department has been disturbed ; in this, and in other things, too minute to be particularized, we discover new proofs of the disposition of the present Executive, unjustly, and indecorously to arraign his predecessors.

As far as the Message undertakes to specify any instance of the improper complexity of our organization, namely, in the instance of the Judiciary establishment, the late administration has been already vindicated.

As to the "*undue* multiplication of offices and "officers," it is substantially a misrepresentation. It would be nothing less than a miracle, if in a small number of instances, it had not happened that particular offices and officers might have been dispensed with. For, in the early essays of a new government, in making the various establishments relative to the affairs of a nation, some mistakes in this respect will arise, notwithstanding the greatest caution. It must happen to every government, that in the hurry of a new plan, some agents will occasionally be employed, who may not be absolutely necessary ; and this, where there is every inclination to economy. Similar things may have happened under our past administrations ; but any competent judge, who will take

the trouble to examine, will be convinced, that there is no just cause for blame in this particular.

The President has not pointed out the cases to which he applies the charge; but he has communicated information of some retrenchments which he has made, and probably intends, that from these the truth of the accusation shall be inferred.

Three instances are particularly presented; these shall be briefly examined; it will be seen that they do not justify the imputation. They respect certain ministers at foreign courts; some navy agents at particular ports; and some inspectors of the revenue in particular States.

As to the first, it is believed to be a pretty just idea, that we ought not greatly to multiply diplomatic agencies. Three permanent ones may, perhaps, be found sufficient in the future progress of our affairs: for *France*, *Spain* and *England*. The expediency of having three, is recognized by the conduct of our present Chief Magistrate. But, others must be employed, and during particular seasons it may be wise to do it for a considerable length of time. Indeed there is strong ground for an opinion entertained by very sensible men, that there ought to be a permanent Minister at every Court with which we have extensive commercial relations.

Two other ministers were employed by both the former administrations, one with Portugal, the other with Holland; and it is asserted without fear of denial, that when this was done by the first President, it was with the approbation of Mr. Jefferson himself. One other Minister was employed by the late President at the Court of Berlin.

A commercial treaty with Portugal is admitted, on all hands, to be particularly desirable; as very interesting branches of our commerce are carried on in the Portuguse dominions. We are still without

any such treaty : To send to that court a diplomatic agent to endeavor to effect one, was a measure of evident propriety ; to recal him before a treaty had been effected, must be of questionable expediency. The views and circumstances of nations change ; and an opportunity may occur, at some particular conjuncture, for effecting what was not before possible, which may be lost by the want of a fit agent on the spot to embrace it. But admitting the experiment has now been sufficiently tried to justify its abandonment, still it does not follow that it was unwise to have continued it as long as it was ; and as this must at least rest in opinion, the continuance, if upon an erroneous calculation in this particular, is no proof of a "disposition to multiply offices or "officers." And those who consider the nature and extent of our commercial relations with Portugal, will not cease to think it problematical, whether the expence of a diplomatic agent, especially in a situation in which nothing has been defined by treaty, ought to stand in competition with the benefits which may result from the presence of a minister at the court of that kingdom. This consideration alone is sufficient to repel the charge.

LUCIUS CRASSUS.

THE EXAMINATION.

NUMBER 10.

The same subject continued.

AS to Holland—being the second power which acknowledged our Independence, and made a treaty with us, a step which involved her in war with Great Britain, it was deemed proper to treat her with a marked respect. Besides this, from the time of

our revolution to the present, we have had large money concerns with her people. A trusty and skilful public agent was for a long time necessary to superintend those concerns; and by the annexation of a diplomatic character, a double purpose was answered. The honourable nature of the station enabled the government to find a competent agent at a less expence than would have been requisite to procure one merely for the money-object. It is not meant to deny, that the great change which has lately happened in the affairs of that country, making it in effect a dependency on France, rendered a removal of the minister proper: but it does not follow that it ought to have been done sooner. It is also known, that Mr. Murray the late envoy, has been for a considerable time past, employed in our negociations with France, which probably was a collateral reason for not recalling him sooner. In respect to one, if not to both these agents, it may be observed, that a time of war was not the most eligible moment for the removal of a minister.

As to Berlin, the inducements for keeping a minister there, have never been fully explained. It is only known, that our commercial treaty with Prussia had expired, and that a renewal has been effected by the envoy sent thither; but influential as was the Court of Prussia in the affairs of Europe, during the late dreadful storm, it may have been conceived, that a cultivation of the good will of the Prussian Monarch was not a matter of indifference to the peace and security of this country. If this was the object of the mission, though there may have been too far-fetched a policy in the case, it offers a defence of the measure, which exculpates the executive, at least from the charge of a desire to multiply officers improvidently.

On the most unfavourable supposition then, here

was one diplomatic agent too many, and two others were continued longer than was absolutely necessary. This surely is not of magnitude sufficient to constitute a serious charge, where malevolence does not inspire a spirit of accusation. In considering this question, it ought to be remembered, that it is the prevailing policy of Governments to keep diplomatic agents at all Courts where they have important relations.

As to the navy agents it is sufficient to say, that they were temporary persons who grew up out of our rupture with France; who, when they were appointed, were useful to accelerate naval preparations at as many points as could be advantageously occupied, and that it was only proper to discontinue them when an accommodation had been effected, and after they had had time enough to wind up the affairs of their agency. This was not the case previous to Mr. Jefferson's administration. Accordingly in some early instances of removal, it was only done to substitute members of his own *sect*. And though several of the navy agents, were afterwards discontinued, spleen itself cannot imagine any colour of blame, either as to the appointment or continuance of them.

As to the inspectors of the Revenue, the case in brief stands thus—When the excise on distilled spirits was established, three different descriptions of officers were instituted to carry it into effect—Supervisors, Inspectors and Collectors distributed to districts, surveys and divisions, one to each.—A district comprehending an entire state; a survey some large portions of it or a number of counties; a division for the most part a single county. In some of the small states there were no distinct officers for the surveys—the duties of inspectors being annexed to those of supervisor; in larger ones there were Inspectors, more or less numerous, according to their

extent. As other internal revenues were established, they were put under the management of the same officers. The bare statement of the fact shows the necessity of these officers. The revenues of no government were perhaps ever collected under a more simple organization, or through a smaller number of channels. It is not alledged that the first and last classes of officers were unnecessary. It is only to the middle class that any specious objection can be made. Let us conjecture the reasons for employing them.

In some of the states great opposition was expected, and was actually experienced. In such states especially, it was evidently useful to have the exertions of some men of weight and character in spheres of moderate extent, to reconcile the discontented; to arrange the details of business, and to give energy to the measures for collection. In others, similar officers were probably useful in the early stages, for the purpose of establishing the details simply. The subdivision was in all cases favourable to an active and vigilant superintendance. Nor does it require extraordinary penetration to discern that the policy was wise at the time when the measure was adopted. It is possible that upon the complete establishment of the plan, when all opposition had been vanquished, and when the collection had become an affair of mere routine, that this intermediate class may have ceased to be essential. But till this had become perfectly evident, it would have been premature to alter the original plan. Though it be true, that some years have elapsed since the excise law was passed, it is not very long since it has been in full and uninterrupted operation. Other laws, introducing other branches of internal revenue, have been subsequently passed from time to time, and the agency of the same officers has probably been found useful on their first introduction and execution.

Hence it is easily accounted for, that the inspectors were not before discontinued, if indeed experience has shewn that they are not still necessary, which is itself problematical. Nothing is more easy than to reduce the number of agents employed in any business, and yet for the business to go on with the reduced number. But before the reduction is applauded, it ought to be ascertained that the business is as well done as it was before. There is a wide difference between merely getting along with business and doing it well and effectually.

These observations sufficiently shew that in the instances which have been cited, there is no evidence of a disposition in the preceding Administrations, improperly to multiply offices and officers. Acting under different circumstances, they conducted as those circumstances dictated, and in all probability, in a manner the best adapted to the advancement of the public service. A change of circumstances, may in some instances have rendered a continuance of some of the agents thus employed unnecessary; and the present Chief Magistrate may even be right in discontinuing them; but it is not therefore right to attempt to derive from this any plea of peculiar merit with the people; and it is very far from right to make it a topic of slander on predecessors. Perhaps however this is too rigorous a construction, and that nothing more was intended than to set off to the best advantage, the petty services of petty talents.

If this was the true aim, it is to be regretted that it was not so managed as to avoid the appearance of a design to depreciate in the public estimation, those who went before.—Had this delicacy been observed, the attempt would have attracted neither notice nor comment. At most it would have been said,

> " Commas and points he sets exactly right,
> " And 'twere a sin to rob him of his mite."

LUCIUS CRASSUS.

THE EXAMINATION.

NUMBER 11.

THE Message observes "that in our care of the 'public contributions entrusted to our direction, it 'would be prudent to multiply barriers against the 'dissipation of public money, by appropriating spe-'cific sums to every specific purpose, *susceptible of de-'finition;* by disallowing all applications of money 'varying from the appropriation in object, or trans-'cending it in amount, by reducing the undefined 'field of contingencies, and thereby circumscribing 'discretionary powers over money, and by *bringing 'back* to a single department all accountabilities for 'money where the examination may be prompt, ef-'ficacious and uniform." In this recommendation we can be at no loss to discover additional proof of a deliberate design in the present Chief Magistrate, to arraign the former administrations. All these suggestions imply on their part, either a neglect of, or a defective attention to the objects recommended; some of them go farther and insinuate that there had been a departure from correct plans, which had before been adopted. The censure intended to be conveyed is as unjust, as the conceptions which have dictated it are crude and chimerical. In all matters of this nature, the question turns upon the proper boundaries of the precautions to be observed; how far they ought to go; where they should stop; how much is necessary for security and order; what qualifications of general rules are to be admitted to adapt them to practice, and to attain the ends of the public service. It is certainly possible to do too much as well as too little; to embarrass, if not defeat the end intended, by attempting more than

is practicable ; or to overbalance the good, by evils accruing from an excess of regulation. Men of business know this to be the case in the ordinary affairs of life : how much more must it be so, in the extensive and complicated concerns of an Empire? To reach and not to pass the salutary medium is the province of sound judgment : To miss the point, will ever be the lot of those, who, enveloped all their lives in the mists of theory, are constantly seeking for an ideal perfection, which never was and never will be attainable in reality. It it about this medium, not about general principles, that those in power in our government have differed ; and to experience, not to the malevolent insinuations of rivals, must be the appeal, whether the one or the other description of persons have judged most accurately. Yet discerning men may form no imperfect opinion of the merits of the controversy between them, by even a cursory view of the distinctions on which it has turned.

Nothing, for instance, is more just or proper than the position that the Legislature ought to appropriate specific sums, for specific purposes ; but nothing is more wild or of more inconvenient tendency, than to attempt to appropriate " a specific ' sum for each specific purpose, *susceptible of defini-* ' *tion ;*" as the Message preposterously recommends. Thus, (to take a familiar example) in providing for the transportation of an army ; *oats* and *hay* for the subsistence of horses, are each, susceptible of a definition, and an estimate, and a precise sum may be appropriated for each separately ; yet in the operations of an army, it will often happen that more than a sufficient quantity of the one article may be obtained, and not a sufficient quantity of the other : If the appropriations be distinct, and the officer who is to make the provision, be not at liberty to divert

the fund from one of these objects to the other, (as the doctrine of the Message implies) the horses of the army may in such a case starve; and its movements be arrested—in some situations, even the army itself may likewise be starved, by a failure of the means of transportation.

If it be said, that the inconvenience here suggested, may be avoided, by making the appropriations for *forage* generally, and not for the items which compose it separately: The answer is, first, that this, by uniting and blending different things, susceptible each of a precise definition, is an abandonment of the principle of the Message; secondly, That it would be only a partial cure for the mischiefs incident to that rigorous principle. It might happen that the badness of roads would injure the waggons of the army more than was anticipated, and so much more, as to exhaust the specific fund appropriated for their repairs; it might also have happened, from various causes, that at an earlier period of the campaign, the consumption of forage had been less than was calculated, so that there would be a surplus of the fund destined for this object; if, in such a case, the public Agent could not transfer that surplus to the repairs of the waggons, the motions of the army might, in this way, be suspended, and in the event, famine and ruin produced.

This analysis might be pursued, so as to prove that similar evils are inseparable from a much more qualified application of the principle in the Message, and to demonstrate that nothing more can safely or reasonably be attempted, than to distribute the public expences, into a certain number of convenient sub-divisions or departments; to require from the proper officers, estimates of the items, which are to compose each head of expence; and after examining these with due care, to adapt the appropriations

to the respective aggregates; applying a specific sum to the amount of each great sub-division:—the pay of the army; military stores; quarter-master stores; &c. &c. This, with even more detail than could be well executed, has been uniformly done, under the past administrations of the present Government, from the very beginning of its proceedings. More will, in the experiment, be found impracticable and injurious; especially in seasons and in situations, when the public service demands activity and exertion.

In like manner, the former practice of the government, has corresponded with the rule, taken in its true and just sense, of "disallowing all applications of money, varying from the appropriation in object, or transcending it in amount." It is confidently believed, that whoever shall alledge or insinuate to the contrary, may be challenged to point out the instance, in which money has been issued from the Treasury for any purpose, which was not sanctioned by a regular appropriation, or which exceeded the appropriated amount; or where there was an expenditure of money allowed, that was not strictly within the limits of such an appropriation; except indeed, upon the impracticable idea of minutely separating, and distinguishing the items, which form the aggregate of some general head of expenditure.

It is likewise material to have it well understood, that generally speaking, the distinction between the appropriations for different objects, can only be strictly observed at the Treasury itself; which can easily take care that more money shall not go out for any purpose, than is authorised by law; and can see that this money is fairly expended by the proper officer, in conformity with the general spirit of the appropriation prescribed by the law. But it is in

most cases impossible for the officer, charged with a particular branch of the public service, to separate nicely, in the details of expenditure, the different funds which may have been placed in his hands. Thus, (still drawing our examples from the military department, where the danger of misapplication is always the greatest) if several sums be placed in the hands of the Quarter-Master General, for different objects, he must of necessity, distribute a large proportion of them among his principal deputies, and these again among subordinate agents. Unless this distribution be pursued through the remotest ramifications, down to the moment of final expenditure, it is evident that it must fail throughout; and it is no less evident that it cannot be so far pursued. But to this, the accountantship only would be an insuperable obstacle; it would require in every, the most inferior agent, a profound knowledge of accounts, and would impose, both on principals and subordinates, the duty of keeping such a multiplicity of them, as, if even practicable, would exhaust the funds issued for the public service, in mere clerkship. Another most mischievous consequence would ensue. The exigencies of the public service are often so variable, that a public agent would frequently find himself full-handed for one purpose, empty-handed for another, and if forbidden to make a transfer, not only the service would suffer, but an opportunity with very strong temptation, would be given, to traffic with the public money for private gain; while the business of the government would be stagnated by the injudicious and absurd impediments of an over-driven caution. Happily, it is not very material, that the principle of distinct appropriations for separate objects, should be carried through all the details. The essential ends of it are

answered, if it be strictly pursued, in the issuing of money from the treasury, and if this department be careful that the principal lines of discrimination are not transgressed.

The theory of the Message plainly contemplates, that in no case shall the *actual money* appertaining to one fund, be expended for the purpose of another; though each fund may be sufficient for its object, and though there may be an appropriation for each object. This is another excess of theory; which, with a *full treasury*, would often disable the Government from fulfilling its engagements, and from carrying on the public business. To execute this plan, consistently with the exigencies of national expenditure, would probably require, in ordinary, a triplication of the revenues, or a capital necesary for the whole amount of that expenditure, and would very often lock up from circulation large sums, which might be of great importance to the activity of trade and industry. Such are the endless blessings to be expected from the notable schemes of a Philosophic *Projector!* Strict to a fault, where relaxation is necessary; lax to a vice, where strictness is essential!

As to "reducing the undefined field of contin-'gencies, and circumscribing discretionary powers 'over money," observations similar to those which have been already made, occur. The term *reducing*, implies, that the thing must exist in a degree; and indeed it is manifest, that all the minute casualties of expenditure, especially in the naval and military departments cannot be foreseen and defined. The question then must be, have not the limits been sufficiently narrow for the situation of the government, in the scenes through which it has passed; comprehending for a great part of the time Indian wars and foreign hostilities? Certainly if viewed on

a proportionable scale, the extent appears to have been as moderate as could have been desired; and no blame can justly attach to the administration, on this account.

As to "*bringing back* to a single department all 'accountabilities for money," there never has been a deviation from that system. The Department of the Treasury has uniformly preserved a vigilant superintendance over all accountabilities for public money. A particular accountant, indeed, has been appointed in the War and Navy Departments, but he has been subordinate to the Treasury Department, which has prescribed regulations for his conduct, and has constantly revised his proceedings. It is true, that by his connection with the particular department for which he is accountant, there are cases in which he is to be guided by the directions of the Head of that Department; but though these directions, if not plainly contrary to the rules prescribed by the Treasury, would exempt him from responsibility, the directions themselves pass under the review of the Treasury, as a check upon the head of the Department to which he is attached; and in case of abuse, they would serve to establish a responsibility of the principal. To say, that this interferes with a prompt examination of accounts, is to affirm, that a division of labor is injurious to dispatch; a position contrary to all experience. The fact, without doubt, is, that it essentially contributes to dispatch; and that whatever new modification may be adopted, either the accounts of the other departments will never keep pace with the current of business in times of activity, or that modification must adhere to the principle of employing distinct organs.

If it be the design to exclude, in every case, the intervention of the head of the particular Department, some or all of these evils will follow: The

service of that Department will suffer by unduly restricting its head, in cases in which he must be the most competent judge; and by obliging him, in order to avoid eventual difficulties, to resort, in the first instance, to another Department, less alive than himself to the exigencies of his own, for a cautious and slow, perhaps a reluctant acquiescence in arrangements, which require promptness; if, in the spirit of confidence and accommodation, the officers of the Treasury yield a ready compliance with the wishes of the head of such Department, they may inadvertently co-operate in measures which they would have disapproved and corrected on a deliberate and impartial revision. If this spirit be not shewn, not only the immediate service of the Department may be improperly impeded, but sensations, unfriendly to the due harmony of the different members of the administration, may be engendered. On one side of the dilemma stands Collusion, on the other Discord.

The existing plan steers a middle and a prudent course; neither fettering too much the heads of the other Departments, nor relinquishing too far the requisite controul of the Treasury. Its opposite supposes all trust may be placed in one Department—none in the others. The extravagant jealousy of the overbearing influence of the Treasury Department, which was so conspicuous in the times of the two former secretaries, has of a sudden given way to unlimited confidence! The intention seems to be to surround the brow of their immaculate successor, with the collected rays of legislative and executive favor. But vain will be the attempt to add lustre to the dim luminary of a benighted administration!

LUCIUS CRASSUS.

THE EXAMINATION.

NUMBER 12.

FROM the manner in which the subject was treated in the fifth and sixth numbers of the Examination, it has been doubted, whether the writer did or did not entertain a decided opinion as to the power of Congress to abolish the offices and compensations of Judges, once instituted and appointed, pursuant to a law of the United States—In a matter of such high constitutional moment, it is a sacred duty to be explicit. The progress of a bill lately brought into the Senate for repealing the law of the last session, entitled, "an Act to provide 'for the more convenient organization of the courts 'of the United States," with the avowed design of superceding the judges, who were appointed under it, has rendered the question far more serious than it was while it rested merely on the obscure suggestion in the Presidential Message. 'Till the experiment had proved the fact, it was hardly to have been imagined, that a majority of either house of Congress, whether from design or error, would have lent its sanction to a glaring violation of our national compact, in that article, which, of all others, is the most essential to the efficiency and stability of the Government; to the security of property; to the safety and liberty of person. This portentous and frightful phenomenon has, nevertheless, appeared. It frowns with malignant and deadly aspect upon our Constitution. Probably before these remarks shall be read, that Constitution will be no more! It will be numbered among the numerous victims of Democratic phrenzy; and will have given another and

an awful lesson to mankind—the prelude perhaps of calamities to this country, at the contemplation of which imagination shudders?

With such prospect before us, nothing ought to be left unessayed, to open the eyes of thinking men to the destructive projects of those mountebank politicians, who have been too successful in perverting public opinion, and in cheating the people out of their confidence; who are advancing with rapid strides in the work of disorganization—the sure fore-runner of tyranny; and who, if they are not arrested in their mad career, will ere long, precipitate our nation into all the horrors of anarchy.

It would be vanity to expect to throw much additional light upon a subject, which has already exhausted the logic and eloquence of some of the ablest men of our country; yet it often happens, that the same arguments placed in a new attitude, and accompanied with illustrations, which may have escaped the ardor of a first research, serve both to fortify and to extend conviction. In the hope that this may be the case, the discussion shall be pursued with as much perspicuity and brevity, as can be attained.

The words of the Constitution are, "The Judg-'es *both* of the Supreme and Inferior Courts *shall* 'hold their offices during good behaviour, and shall at 'stated times receive for their services a compensa-'tion which *shall not be diminished during their con-'tinuance in office.*"

Taking the literal import of the terms as the criterion of their true meaning, it is clear, that the *tenure* or *duration* of the office is limited by no other condition than the *good behaviour* of the incumbent. The words are imperative, simple, and unqualified: "The Judges *shall hold their offices during good be-'havior.*" Independent therefore of any artificial reasoning to vary the natural and obvious sense of

the words, the provision must be understood to vest in the Judge a right to the office, indefeasible but by his own misconduct.

It is consequently, the duty of those who deny this right, to shew either that there are certain presumptions of intention, deducible from other parts of the constitutional instrument, or certain general principles of constitutional law or policy, which ought to control the literal and substitute a different meaning.

As to presumptions of intention, different from the import of the terms, there is not a syllable in the instrument from which they can be inferred; on the contrary, the latter member of the clause cited, affords a very strong presumption the other way.

From the injunction, that the compensation of the Judges shall not be diminished, it is manifest, that the Constitution intends to guard the Independence of those Officers, against the Legislative Department: because, to this Department *alone* would have belonged the power of diminishing their compensations.

When the Constitution is thus careful to tie up the Legislature, from taking away *part* of the compensation, is it possible to suppose that it can mean to leave that body at full liberty to take away the *whole?* The affirmative imputes to the Constitution the manifest absurdity of holding to the Legislature this language, "You shall not *weaken* the Inde-
'pendence of the Judicial character, by exercising
'the power of *lessening* his emolument, but you may
'*destroy* it altogether, by exercising the greater pow-
'er of *annihilating* the recompence with the office."
No mortal can be so blind as not to see, that by such a construction, the restraint intended to be laid upon the Legislature by the injunction not to

lessen the compensation, become absolutely nugatory.

In vain is a justification sought in that part of the article which provides that "the Judical power of the United States shall be vested in one supreme Court and in such inferior Courts as the Congress *may* from time to time ordain and establish." The position that a discretionary power to institute Inferior Courts includes virtually a power to abolish them, if true, is nothing to the purpose. The abolition of a Court does not necessarily imply that of its Judges. In contemplation of law, the Court and the Judge are distinct things. The Court may have a legal existence, though there may be no Judge to exercise its powers. This may be the case, either at the original creation of a Court, previous to the appointment of a Judge, or subsequently by his death, resignation or removal: In the last case, it could not be pretended that the Court had become extinct by the event. In like manner, the office of the Judge may subsist, though the Court in which he is to officiate, may be suspended or destroyed. The duties of a Judge, as the office is defined in our Jurisprudence, are two-fold—judical and ministerial. The latter may be performed out of Court, and often without reference to it. As conservator of the peace, which every judge is *ex officio*, many things are done, not connected with a judicial controversy, or to speak technically, with a *lis pedens*. This serves to illustrate the idea, that the office is something different from the Court; which is the place or situation for its principal action, yet not altogether essential to its activity. Besides, a Judge is not the less a Judge, when out of Court than when in Court. The law does not suppose him to be always in Court, yet it does suppose him to be always in office; in vacation as well as in term. He has also a property

or interest in his office, which entitles him to civil actions and recompence in damages, for injuries that affect him in relation to his office: but he cannot be said to have a property or interest in the Court of which he is a member. All these considerations confirm the hypothesis, that the Court and the Judge are distinct legal entities, and therefore may exist, the one independently of the other.

If it be replied, that the office is an incident to the Court, and that the abolition of the principal includes that of the incidents—the answer to this is, that the argument may be well founded as to all subsequent appointments; but not as to those previously made. Though there be no office to be filled in future, it will not follow that one already vested in an individual, by a regular appointment and commission, is thereby vacated and divested. Whether this shall or shall not happen, must depend on what the Constitution or the law has declared with regard to the *tenure* of the office. Having pronounced that this shall be *during good behaviour*, it will preserve the office, to give effect to that tenure for the benefit of the possessor. To be consistent with itself, it will require and prescribe such a modification and construction of its own acts, as will reconcile its power over the future, with the rights which have been conferred as to the past.

Let it not be said, that an office is a mere trust for public benefit, and excludes the idea of a property or a vested interest in the individual. The first part of the proposition is true—the last false. Every office combines the two ingredients of an interest in the possessor, and a trust for the public. Hence it is that the law allows the officer, redress by a civil action, for an injury in relation to his office, which presupposes property or interest. This interest may be defeasible at the pleasure of the government, or

it may have a fixed duration, according to the constitution of the office. The idea of a vested interest holden even by a permanent tenure, so far from being incompatible with the principle, that the primary and essential end of every office is the public good, may be conducive to that very end, by promoting a diligent, faithful, energetic, and independent execution of the office.

But admitting, as seems to have been admitted by the speakers on both sides of the question, that the judge must fall with the court, then the only consequence will be, that Congress cannot abolish a court once established. There is no rule of interpretation better settled, than that different provisions in the same instrument, on the same subject, ought to be so construed, as, if possible, to comport with each other, and give a reasonable effect to all.

The provision that "The Judiciary Power shall 'be vested in one Supreme Court and in such in-'ferior courts as the Congress *may* from time to 'time ordain and establish," is immediately followed by this other provision, "The judges *both* of the 'Supreme and Inferior Courts shall hold their offices 'during good behavior."

The proposition, that a power to do, includes virtually, a power to undo, as applied to a legislative body, is generally but not universally true. All *vested rights* form an exception to the rule. In strict theory, there is no lawful or moral power to divest by a subsequent statute, a right vested in an individual, by a prior: And accordingly it is familiar to persons conversant with legal studies, that the repeal of a law does not always work the revocation or divestiture of such rights.

If it be replied, that though a legislature might act immorally and wickedly, in abrogating a vested right, yet the legal *validity* of its act for such a pur-

pose, could not be disputed; it may be answered, that this odious position, in any application of it, is liable to question in every limited Constitution; (that is, in every Constitution, which, in its theory, does not suppose the WHOLE POWER of the Nation to be lodged in the Legislative body;*)—and that it is certainly false, in its application to a Legislature, the authorities of which are defined by a positive written Constitution, as to every thing which is contrary to the actual provisions of that Constitution. To deny this, is to affirm that the *delegated* is paramount to the *constituent* power. It is in fact to affirm there are *no constitutional limits to the Legislative Authority.*

The enquiry then must be, whether the power to abolish Inferior Courts, if implied in that of creating them, is not abridged by the clause which regulates the tenure of Judicial office.

The first thing which occurs in this investigation, is, that the power to abolish is, at most, an implied or incidental power, and as such, will the more readily yield to any express provision with which it may be inconsistent.

The circumstance of giving to Congress a discretionary power to establish inferior Courts, instead of establishing them specifically in the Constitution, has, with great reason, been ascribed to the impracticability of ascertaining beforehand the number and variety of Courts, which the developement of our national affairs might indicate to be proper; especially in relation to the progress of new settlements, and the creation of new states. This rendered a discretionary power to *institute* Courts indispensable; but it did not alike render indispensable a power to abolish those which were once instituted. It was conceiveable that with intelligence, caution,

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* As in the Parliament of Great-Brita in.

and care, a plan might be pursued in the institution of Courts, which would render abolitions unnecessary. Indeed, it is not presumable with regard to establishments of such solemnity and importance, making part of the *organization* of a principal department of the Government, that a fluctuation of plans was anticipated. It is therefore not essential to suppose, that the power to destroy was intended to be included in the power to create: Thus the words "to ordain and establish," may be satisfied by attributing to them only the latter effect.—Consequently when the grant of the power to institute Courts, is immediately succeeded by the declaration that the Judges of those Courts shall *hold* their offices during good behaviour; if the exercise of the power to abolish the Courts, cannot be reconciled with the actual holding or enjoyment of the office, according to the prescribed tenure, it will follow that the power to abolish is interdicted. The implied or hypothetical power, to destroy the office, must give way to the express and positive right of holding it during good behaviour. This is agreeable to the soundest rules of construction; the contrary is in subversion of them.

Equally in vain, is a justification of the construction adopted by the advocates of the repeal, attempted to be derived from a distinction between the Supreme and Inferior Courts. The argument, that as the former is established by the Constitution, it cannot be annulled by a Legislative act, though the latter which must owe their existence to such an act may by the same authority be extinguished, can afford no greater stability to the office of a Judge of the Supreme Court than to that of a Judge of Inferior Court. The Constitution does indeed establish the Supreme Court; but it is altogether silent as to the number of Judges. This is as fully left to

Legislative discretion as the institution of Inferior Courts; and the rule that a power to undo is implied in the power to do, is therefore no less applicable to the reduction of the number of the Judges of the Supreme Court, than to the abolition of the Inferior Courts. If the former are not protected by the clause, which fixes the tenure of office, *they* are no less at the mercy of the Legislature than the latter: And if that clause does protect them, its protection must be equally effectual for the Judges of the Inferior Courts. Its efficacy in either case, must be founded on the principle that it operates as a restraint upon the Legislative discretion; and if so, there is the like restraint in both cases, because the very same words in the very same sentence, define conjunctly the tenure of office of the two classes of Judges. No sophistry can elude this conclusion.

It is therefore plain to a demonstration, that the doctrine which affirms the right of Congress to abolish the Judges of the Inferior Courts, is absolutely fatal to the independence of the Judiciary Department. The observation that so gross an abuse of power, as would be implied in the abolition of the Judges of the Supreme Court, ought not to be supposed, can afford no consolation against the extreme danger of the doctrine. The terrible examples before us, forbid our placing the least confidence in that delusive observation. Experience, sad experience warns us to dread every extremity—to be prepared for the worst catastrophe that can happen.

LUCIUS CRASSUS.

THE EXAMINATION.

NUMBER 13.

THE advocates of the power of Congress to abolish the Judges, endeavor to deduce a presumption of intention favorable to their doctrine, from this argument—The provision concerning the tenure of office (say they) ought to be viewed as a restraint upon the Executive Department, *because*, to this Department belongs the power of removal; in like manner as the provision concerning the diminution of compensation, ought to be regarded as a restraint upon the Legislative Department, *because*, to this Department belongs the power of regulating compensations: The different members of the clause ought to be taken distributively in conformity with the distribution of power to the respective Departments.

This is certainly the most specious of the arguments which have been used on that side. It has received several pertinent and forcible answers. But it is believed to be susceptible of one still more direct and satisfactory; which is not recollected to have been yet given.

If, in the theory of the Constitution, there was but one way of *defeating the tenure* of office, and that exclusively appertaining to the Executive Authority, it would be a natural and correct inference that this authority was solely contemplated, in a constitutional provision upon the subject. But the fact is clearly otherwise. There are two modes known to the Constitution, in which the tenure of office may be affected—one the abolition of the office; the other the removal of the officer. The first is a Legislative act, and operates by removing the office

from the person—the last is an Executive act, and operates by removing the person from the office. Both equally cause the tenure, enjoyment, or *holding* of the office to cease.

This being the case, the inference which has been drawn, fails. There is no ground for the presumption, that the Constitution, in establishing the tenure of an office, had an exclusive eye to one only of the two modes in which it might be effected. The more rational supposition is, that it intended to reach and exclude both; because, this alone can fulfil the purpose which it appears to have in view: And it ought neither to be understood to aim at less than its language imports, nor to employ inadequate means for accomplishing the end which it professes. Or, the better to elucidate the idea, by placing it in another form, it may be said, that, since in the nature of things the Legislative, equally with the Executive organ, may by different modes of action affect the tenure of office; when the Constitution undertakes to prescribe what that tenure shall be, it ought to be presumed to intend to guard that which shall have been prescribed, against the interference of either Department.

In an instrument, abounding with examples of restrictions on the Legislative discretion, there is no difficulty in supposing that one was intended, in every case in which it may be fairly inferred, either from the words used, or from the object to be effected.

While the reason which has been stated, refers the provision respecting the tenure of judicial offices as well to the Executive as to the Legislative Department, were it necessary to examine to which, if to either of them, it ought to be deemed most appropriate, there could be no difficulty in selecting the latter, rather than the former. The *tenure* of an office is one of its essential *qualities*. A provision,

therefore, which is destined to prescribe or define this quality, may be supposed to have a more peculiar reference to that Department, which is empowered to constitute the office; either as directory to it, in the exercise of its power, or as fixing what otherwise would be left to its discretion.

It is constantly to be recollected, that the terms of the provision do not look particularly to either Department. They are general, "The Judges shall 'hold their offices during good behaviour." 'Tis not from the terms, therefore, that an exclusive applicability to the Executive Organ can be inferred. On the contrary, they must be narrowed, to give them only this effect.

It is different as to the provision concerning compensations. Though equally general in the terms, this can have no relation but to the Legislative Department; *because*, as before observed, that Department alone would have had power to diminish the compensations. But this reason for confining that provision to one Department, namely, the power of affecting the compensations, so far from dictating a similar appropriation of the other provision, looks a different way, and requires by analogy that the latter should be applied to both the Departments, each having a power of affecting the tenure of office, in a way peculiar to itself. Nor can it be too often repeated, because it is a consideration of great force, that the design, so conspicuous in the former of these two provisions, to secure the Independence of the Judges against Legislative influence, is a powerful reason for understanding the latter in a sense calculated to advance the same important end, rather than in one which must intirely frustrate it.

A rule of constitutional law opposed to our construction, is attempted to be derived, from the maxim, that the power of legislation is always equal; and

that a preceding can never bind or controul a succeeding legislature, by its acts, which therefore must always be liable to repeal at the discretion of the successor.

The misapplication, or too extensive application of general maxims or propositions, true in their genuine sense, is one of the most common and fruitful sources of false reasoning. This is strongly exemplified in the present instance. The maxim relied upon, can mean nothing more, than, that as to all those matters which a preceding legislature was free to establish, and revoke, a succeeding legislature will be equally free. The latter may do what the former could have done, or it may undo what the former could have undone. But unless it can be maintained, that the power of ordinary legislation is in itself illimitable, incontroulable, incapable of being bound either by its own acts, or by the injunctions or prohibitions of a Constitution, it will follow, that the body invested with that power, may bind itself, and may bind its successor; so that neither itself nor its successor can, of right, revoke acts which may have been once done. To say that a legislature may bind itself, but not its successor, is to affirm, that the latter has not merely an equal, but a greater power than the former, else it could not do what the former was unable to do. Equality of power only will not suffice for the argument. On the other hand, to affirm that a legislature cannot bind itself, is to assert, that there can be no valid pledge of the public faith, that no right can be vested in an individual or collection of individuals, whether of property, or of any other description, which may not be resumed at pleasure.

Without doubt, a legislature binds itself, by all those acts which engage the public faith; which confer on individuals permanent rights; either gratuitously or for valuable consideration; and in all these

instances, a succeeding one is not less bound. As to a right which may have been conferred by an express provision of the Constiution defining the condition of the enjoyment ; or as to an institution or matter in its nature permanent, which the Constitution may have confided to an act of the legislature; its authority terminates with the act that vests the right or makes the establishment. A case of the first sort, is exemplified in the office of a Judge ; of the last, in the creation of a new state, which has been very pertinently mentioned as a decisive instance of power in a legislature, to do a thing which being done is irrevocable.

But whatever may be the latitude we assign to the power of a legislature over the acts of a predecessor, it is nothing to the purpose, so long as it shall be admitted that the Constitution may bind and controul the legislature. With this admission, the simple inquiry must always be—has or has not the Constitution in the particular instance, bound the legislature? And the solution must be sought in the language, nature, and end of the provision. If these warrant the conclusion, that the legislature was intended to be bound, it is perfect nonsense to reply, that this cannot be so because a legislature cannot bind itself by its own acts ; or because the power of one legislature is equal to that of another. What signifies this proposition, if the Constitution has power to bind the legislature, and has in fact bound it in a given case ? Can a general rule disprove the fact of an exception which it is admitted may exist ? If so, the argument is always ready, and eqally valid to disprove any limitation of the legislative discretion.

Compelled, as they must be, to desist from the use of the argument in the extensive sense in which it has been employed, if its inventors should content themselves with saying, that at least, the principle

adduced by them ought to have so much of force, as to make the exception to it depend on an express provision—it may be answered, that in the case under consideration, there is an express provision. No language can be more precise or peremptory than this, "The Judges, *both* of the Supreme and Inferior 'Courts, shall hold their offices during good be-'havior." If this be not an express provision, it is impossible to devise one. But the position, that an express provision is necessary to form an exception, is itself unfounded. Wherever it is clear, whether by a circumstance expressed, or by one so implied as to leave no reasonable doubt, that a limitation of the authority of the legislature was designed by the Constitution, the intention ought to prevail.

A very strong confirmation of the true intent of the provision respecting the tenure of Judicial office, results from an argument by analogy. In each of the articles which establishes any branch of the government, the duration of office is a prominent feature. Two years for the House of Representatives, six for the Senate, four for the President and Vice-President, are the respective terms of duration; and for the Judges, the term of good behavior is allotted. It is presumable, that each was established in the same spirit, as a point material in the organization of the government and of a nature to be properly fundamental. It will not be pretended that the duration of office prescribed as to any other department, is within the reach of Legislative discretion. And why shall that of Judicial Officers form an exception? Why shall the Constitution be supposed less tenacious of securing to this organ of the sovereign power, a fixed duration than to any other? If there be any thing which ought to be supposed to be peculiarly excepted out of the power of the ordinary Legislature, it is emphatically the organization of the seve-

ral constituent departments of the Government; which in our system are the *Legislative*, *Executive*, and *Judiciary*. Reasons of the most cogent nature recommend, that the stability and independence of the last of these three branches, should be guarded with particular circumspection and care.

LUCIUS CRASSUS.

THE EXAMINATION.

NUMBER 14.

IN the course of the debate in the Senate, much verbal criticism has been indulged: many important interferences have been attempted to be drawn from distinctions between the words *shall* and *may*. This species of discussion will not be imitated because it is seldom very instructive or satisfactory. These terms, in particular cases, are frequently synonymous, and are imperative or permissive, directing or enabling, according to the relations in which they stand to other words. It is, however, certain, that the arguments even from this source, greatly preponderate against the right of Congress to abolish the Judges.

But there has been one argument, rather of a verbal nature, upon which some stress has been laid, which shall be analized; principally to furnish a specimen of the wretched expedients, to which the supporters of the repeal are driven. It is this, "The 'tenure of an office is not synonymous with its exist-'ence. Though Congress may not annul the tenure 'of a Judicial Office, while the office itself continues; 'yet it does not follow that they may not destroy its 'existence."

The constituent parts of an office are its authorities, duties and duration. These may be denominated the elements of which it is composed. Together they form its *essence* or *existence*.* It is impossible to separate even in idea the duration from the existence: The office must cease to exist when it ceases to have duration. Hence let it be observed, that the word *tenure* is not used in the constitution, and that in the debate it has been the substitute for duration. The words "The Judges shall 'hold their offices during good behavior," are equivalent to these other words; The offices of the Judges shall endure or last, so long as they behave well.

The conclusions from these principles are, that existence is a *whole*, which includes tenure and duration as a part; that it is impossible to annul the existence of an office without destroying its tenure; and consequently that a prohibition to destroy the tenure is virtually and substantially a prohibition to abolish the office. How contemptible then the sophism that Congress may not destroy the tenure, but may annihilate the office!

It has now been seen, that this power of annihilation is not reconcileable with the language of the constitutional instrument, and that no rule of constitutional law, which has been relied upon, will afford it support. Can it be better defended by any principle of constitutional policy?

To establish the affirmative of this question, it has been argued, that if the Judges hold their offices by a title absolutely independent of the Legislative will, the Judicial Department becomes a colossal and overbearing power, capable of degenerating into a

* The remuneration or recompence is not added, because it is most properly an accessory,

permanent tyranny ; at liberty, if audacious and corrupt enough, to render the authority of the Legislature nugatory, by expoundin gaway the laws, and to assume a despotic controul over the rights of person and property.

To this argument (which supposes the case of a palpable abuse of power) a plain and conclusive answer is, that the constitution has provided a complete safeguard in the authority of the *House of Representatives* to impeach ; of the *Senate* to condemn. The Judges are in this way amenable to public Justice for misconduct ; and upon conviction, removeable from office. In the hands of the Legislature itself, is placed the weapon by which they may be put down and the other branches of the government protected. The pretended danger, therefore, is evidently imaginary—the security perfect.

Reverse the Medal. Concede to the Legislature a legal discretion to abolish the Judges ; where is the defence ? Where the security for the Judicial Department ? There is absolutely none. This most valuable member of the government, when rightly constituted the surest guardian of person and property, of which stability is a prime characteristic ; losing at once its most essential attributes, and doomed to fluctuate with the variable tide of faction, degenerates into a disgusting mirror of all the various, malignant and turbulent humors of party-spirit.

Let us not be deceived. The real danger is on the side of that foul and fatal doctrine, which emboldens its votaries, with daring front and unhallowed step, to enter the holy temple of Justice, and pluck from their seats the venerable personages, who, under the solemn sanction of the Constitution, are commissioned to officiate there—to guard that sacred compact with jealous vigilance : to dispense the laws with a steady and impartial hand—un-

moved by the storms of faction, unawed by its powers, unseduced by its favors—shielding right and innocence from every attack—resisting and repressing violence from every quarter. 'Tis from the triumph of that execrable doctrine, that we may have to date the downfall of our Government, and with it, of the whole fabric of Republican Liberty. Who will have the folly to deny that the definition of despotism is the concentration of all the powers of Government in one person or in one body? Who is so blind as not to see, that the right of the Legislature to abolish the Judges at pleasure, destroys the independence of the Judicial Department, and swallows it up in the impetuous vortex of Legislative influence? Who is so weak as to hope that the Executive, deprived of so powerful an auxiliary will long survive? What dispassionate man can withstand the conviction that the boundaries between the departments will be thenceforth nominal; and that there will be no longer more than one active and efficient department?

It is a fundamental maxim of free government, that the three great departments of power, *Legislative*, *Executive* and *Judiciary*, shall be essentially distinct and independent, the one of the other. This principle, very influential in most of our state constitutions, has been particularly attended to in the Constitution of the United States; which, in order to give effect to it, has adopted a precaution peculiar to itself, in the provisons that forbid the Legislature to vary in any way the compensation of the *President*, to diminish that of a *Judge*.

It is a principle equally sound, that though in a government like that of Great Britain, having an hereditary chief with vast prerogatives, the danger to Liberty, by the predominance of one department over the other, is on the side of the Executive; yet

in popular forms of government, this danger is chiefly to be apprehended from the Legislative branch.

The power of legislation is, in its own nature, the most comprehensive and potent of the three great subdivisions of sovereignty. It is the will of the government; it prescribes universally the rule of action, and the sanctions which are to inforce it. It creates and regulates the public force, and it commands the public purse. If deposited in an elective representative of the people, it has, in most cases, the body of the nation for its auxiliary, and generally acts with all the momentum of popular favor. In every such government it is consequently an organ of immense strength. But when there is an hereditary Chief Magistrate, clothed with dazzling prerogatives and a great patronage, there is a powerful counterpoise; which, in most cases, is sufficient to preserve the equilibrium of the government; in some cases, to incline the scale too much to its own side.

In governments wholly popular or representative, there is no adequate counterpoise. Confidence in the most numerous, or Legislative Department, and jealousy of the Executive Chief, form the genius of every such Government. That jealousy, operating in the constitution of the Executive, causes this organ to be intrinsically feeble; and, withholding in the course of administration accessary means of force and influence, is for the most part vigilant to continue it in a state of impotence. The result is that the Legislative body, in this species of Government, possesses additional resources of power and weight; while the Executive is rendered much too weak for competition; almost too weak for self-defence.

A third principle, not less well founded than the other two, is that the Judiciary Department is natu-

rally the weakest of the three. The sources of strength to the Legislative branches have been briefly delineated. The Executive, by means of its several active powers; of the dispensation of honors and emoluments, and of the direction of the public force is evidently the second in strength. The Judiciary, on the other hand, can ordain nothing. It commands neither the purse nor the sword. It has scarcely any patronage. Its functions are not active but deliberative. Its main province is to declare the meaning of the laws; and in extraordinary cases, it must even look up to the Executive aid, for the execution of its decisions. Its chief strength is in the veneration which it is able to inspire by the wisdom and rectitude of its judgments.

This character of the Judiciary clearly indicates that it is not only the weakest of the three Departments of power; but, also, as it regards the security and preservation of civil liberty, by far the safest. In a conflict with the other Departments, it will be happy if it can defend itself—to annoy them is beyond its power. In vain would it singly attempt enterprizes against the rights of the citizen. The other Departments could quickly arrest its arm, and punish its temerity. It can only then become an effectual instrument of oppression, when it is combined with one of the more active and powerful organs; and against a combination of this sort, the true and best guard is a complete independence on each and both of them. Its dependence on either will imply and involve a subserviency to the views of the Department on which it shall depend. Its independence of both will render it a powerful check upon the others, and a precious shield to the rights of persons and property. Safety, Liberty, are therefore inseparably connected with the real and substantial Independence of the Courts and Judges.

It is plainly to be inferred from the instrument itself, that these were governing principles in the formation of our Constitution : that they were in fact so, will hereafter be proved by the cotemporary exposition of persons who, having been themselves members of the body that framed it, must be supposed to have understood the views with which it was framed. Those principles suggest the highest motives of Constitutional policy against that construction, which places the existence of the Judges at the mercy of the Legislature. They instruct us, that to prevent a concentration of powers, *the essence of despotism*, it is essential, that the departments among which they shall be distributed, should be effectually independent of each other ; and that, it being impossible to reconcile this independence with a right in any one or two of them to annihilate at discretion, the organs of the other, it is contrary to all just reasoning to imply or infer such a right. So far from its being correct, that an *express* interdiction is requisite to deprive the Legislature of the power to abolish the Judges, that the very reverse is the true position. It would require a most express provision susceptible of no other interpretation, to confer on that branch of the Government an authority, so dangerous to the others, in opposition to the strong presumptions, which, arise from the care taken in the Constitution in conformity with the fundamental maxims of free governments, to establish and preserve the reciprocal and complete independence of the respective branches, first by a separate organization of the departments ; next by a precise definition of the powers of each ; lastly by precautions to secure to each a permanent support.

LUCIUS CRASSUS.

THE EXAMINATION.

NUMBER 15.

IT is generally understood that the Essays under the Title of the Federalist, which were published at New-York, while the plan of our present Federal Constitution was under the consideration of the people, were principally written by two persons* who had been members of the Convention which devised that plan, and whose names are subscribed to the instrument containing it. In these Essays† the principles advanced in the last number of this Examination are particularly stated and strongly relied upon, in defence of the proposed Constitution; from which it is a natural interference that they had influenced the views with which the plan was digested. The full force of this observation will be best perceived by a recurrence to the work itself; but it will appear clearly enough from the following detached passages.

"One of the principal objections inculcated by 'the more respectable *adversaries* to the Constitu-'tion, is its supposed violation of the political max-'im, that the *Legislative*, *Executive* and *Judiciary* 'Departments ought to be *separate* and *distinct*."
'No *political truth* is certainly of *greater intrinsic* 'value, or is stamped with the authority of more 'enlightened patrons of liberty, than that on which 'the objection is founded. The *accumulation* of all 'power, Legislative, Executive, and Judiciary, in 'the same hands, whether of one, a few, or ma-

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* James Madison, now Secretary of State. Alexander Hamilton, formerly Secretary of the Treasury.

† Particularly Nos. XLVII to LI inclusive, and Nos. LXXVIII to LXXXII inclusive.

'ny; whether hereditary, self-appointed or elec-
'tive, may justly be pronounced the *very definition*
'*of tyranny.*"‡ Neither of the three Departments
'ought to possess *directly* or *indirectly* an *overru-*
'*ling influence* over the others in the administra-
'tion of their respective powers." "But the
'most difficult task is to provide some *practical se-*
'*curity* for each, *against the invasion* of the oth-
'ers." Experience assures us that the efficacy of
'*parchment barriers* has been greatly overrated,
'and that some *more adequate defence is indispen-*
'*sably necessary* for the more feeble against the
'more powerful members of the government.
'The Legislative Department is every where ex-
'tending the sphere of its activity, and drawing all
'power into its impetuous vortex." "In a repre-
'sentative republic, where the executive magistracy
'is carefully limited, both in the extent and the dura-
'tion of its power; and where the legislative power
'is exercised by an assembly, which is inspired by a
'supposed influence over the people with an intrepid
'confidence in its own strength; which is sufficient-
'ly numerous to feel all the passions which actuate
'a multitude; yet not so numerous as to be incapa-
'ble of pursuing the objects of its passions, by
'means which reason proscribes; *it is against the*
'*enterprising ambition of this department, that the peo-*
'*ple ought to indulge all their jealousy and exhaust all*
'*their precaution.*" Again, "The *tendency* of Re-
'publican Governments is to an *aggrandizement of*
'*the Legislative at the expence of the other Depart-*
'*ments.*"

These passages recognize, as a fundamental maxim of free government, that the three departments of power, ought to be separate and distinct; consequently that neither of them ought to be able to ex-

‡ No. XLVII.

ercise, either directly or indirectly, an *overruling influence* over any other. They also recognize as a truth, indicated by the nature of the system and verified by experience, that in a Representative Republic, the Legislative Department is the "AARON'S 'ROD" most likely to swallow up the rest, and therefore to be guarded against with particular care and caution: And they inculcate that parchment barriers, (or the formal provisions of a constitution designating the respective boundaries of authority) having been found ineffectual for protecting the more feeble, against the more powerful members of the Government, some more adequate defence, some practical security, is necessary. What this was intended to be, will appear from subsequent passages.

"To what expedient shall we finally resort for 'maintaining in practice, the necessary partition of 'power among the several Departments as laid down 'in the Constitution?" "As all exterior provisions 'are found to be inadequate, the defect must be sup-'plied by so contriving the interior structure of the 'government, as that its several constituent Depart-'ments may, by their mutual relations, be the means 'of keeping each other in their proper places."*

These passages intimate the "*practical security*" which ought to be adopted for the preservation of the weaker, against the stronger members of the Government. It is so to be contrived in its interior structure that the constituent organs may be able to *keep each other* in their *proper places*; an idea essentially incompatible with that of making the *existence* of one dependent on the *will* of another. It will be seen afterwards, how this structure is to be so contrived.

"In order to lay a *foundation* for that separate and 'distinct exercise of the different powers of govern-

* No. LI.

'ment, which, to a certain extent, is admitted on all 'hands to be essential to the preservation of liberty; 'it is evident that each department should have a will 'of its own; and consequently should be so consti-'tuted, that the members of each should have *as lit-'tle agency* as possible, in the appointment of the 'members of the others. This principle rigorously 'adhered to, would require that all the appointments 'for the several departments, should be drawn from 'the same fountain of authority, the people." But 'In the constitution of the Judiciary Department, it 'might be inexpedient to insist rigorously on the 'principle; first, because peculiar qualifications be-'ing essential in the members, the primary consider-'ation ought to be to select that mode of choice, 'which best secures these qualifications; secondly, 'because *the permanent tenure* by which the appoint-'ments are held in that Department, must soon des-'troy all sense of dependence on the authority con-'ferring them.

"It is equally evident, that the members of each 'Department should be as little dependent as possi-'ble on those of the others, for the emoluments an-'nexed to their offices. Were the Executive Ma-'gistrate or the *Judges* not independent of the *Legis-'lature* in this particular, *their Independence in every 'other* would be merely nominal." "The great 'security against a concentration of the several pow-'ers in the same Department, consists in giving to 'those who administer each Department the *neces-'sary constitutional means and personal motives*, to re-'sist encroachments of the others." "But it is not 'possible to give to each Department an equal pow-'er of self-defence. In Republican Governments 'the Legislative authority necessarily predominates."

The means held out as proper to be employed, for enabling the several departments to keep each other

in their proper places, are: 1. To give to each such an *organization* as will render them essentially independent of one another. 2. To secure to each a *support* which shall not be at the discretionary disposal of any other. 3. To establish between them such *mutual relations of authority*, as will make one a check upon another, and enable them reciprocally to resist encroachments, and confine one another within their proper spheres.

To accomplish the first end, it is deemed material that they should have as little agency as possible in the appointment of one another, and should all emanate directly from the same fountain of authority —the People: And that it being expedient to relax the principle, in respect to the Judiciary Department, with a view to a more select choice of its organs— this defect in the creation ought to be remedied by a *permanent tenure* of office; which certainly becomes nominal and nugatory, if the existence of the office rests on the pleasure of the Legislature. The principle that the several organs should have as little agency as possible in the appointment of each other, is directly opposed to the claim in favor of one of a discretionary agency to destroy another. The second of the proposed ends, is designed to be effected by the provisions for fixing the compensations of the Executive and Judicial Departments. The third by the qualified negative of the Executive, on the acts of the two houses of Congress; by the right of one of these houses to accuse; of the other to try and punish the Executive and Judicial officers; and lastly, by the right of the Judges, as interpreters of the laws, to pronounce unconstitutional acts, void.

These are the means contemplated by the Constitution, for maintaining the limits assigned to itself, and for enabling the respective organs of the Go-

vernment to keep each other in their proper places, so that they may not have it in their power to domineer the one over the other, and thereby in effect, though not in form, to concentrate the powers in one department, overturn the Government, and establish a Tyranny.—Unfortunate, if these powerful precautions shall prove insufficient to accomplish the end, and stem the torrent of the Imposter INNOVATION, disguised in the specious garb of *Patriotism!*

The views which prevailed in the formation of the Constitution are further illustrated, by these additional comments from the same source.*

"As liberty can have nothing to fear from the 'Judiciary alone, but would have every thing to 'fear from its union with either of the other departments; as all the effects of such an union must 'ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; as from the natural feebleness of the Judiciary, it is in continual jeopardy of being overpowered, awed or influenced by its co-ordinate 'branches; and as nothing can contribute so much 'to its firmness and independence, as *permanency in office*, this quality may therefore be justly regarded 'as an indispensable ingredient in its constitution; 'and in a great measure as the citadel of the public 'justice and the public security."

"The complete Independence of the Courts of 'Justice is peculiarly essential in a limited Constitution. Limitations can be preserved in practice no 'other way, than through the medium of the Courts 'of Justice, whose duty it must be to declare all acts 'contrary to the manifest tenor of the Constitution 'void."

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* No. LXXVIII.

Then follows a particular discussion of the position, that it is the right and the duty of the Courts to exercise such an authority: to repeat which, would swell this number to an improper size.

The essence of the argument is, that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void; consequently that no Legislative act, inconsistent with the Constitution, can be valid: That it is not a natural presumption that the Constitution intended to make the Legislative body the final and exclusive Judges of their own powers; but more rational to suppose that the Courts were designed to be an intermediate body between the people and the Legislature, in order, among other things, to keep the latter within the bounds assigned to its authority: That the interpretation of the laws being the peculiar province of the Courts, and a *Constitution* being in fact a *fundamental law*, superior in obligation to a *statute*, if the Constitution and the statute are at variance, the former ought to prevail against the latter; the will of the people against the will of the agents; and the judges ought in their quality of interpreters of the laws, to pronounce and adjudge, the truth, namely, that the unauthorised statute is a nullity.

"Nor (continues the commentator) does this conclusion by any means suppose a *superiority* of the Judicial to the Legislative power. It only supposes that the power of the *people* is superior to both; and that where the will of the *Legislature* declared in its *statute*, stands in opposition to that of the *people* declared in the *Constitution*, the Judges ought to be governed by the latter, rather than the former. They ought to regulate their decisions by the the *fundamental laws*, rather than by those which are *not fundamental*."

" If then the Courts of Justice are to be consid-
' ered as the *bulwarks* of a limited *Constitution*,
' against *Legislative encroachments*, this considera-
' tion will afford a strong argument for the perma-
' nent tenure of Judicial offices."

But no proposition can be more manifest, than that this permanency of tenure must be nominal, if made defeasible at the pleasure of the Legislature; and that it is ridiculous to consider it as an obstacle to encroachments of the Legislative Department, if this Department has a discretion to vacate or abolish it directly or indirectly.

In recurring to the comments which have been cited, it is not meant to consider them as evidence of any thing but of the views with which the Constitution was framed. After all, the Instrument must speak for itself. Yet to candid minds, the cotemporary explanation of it, by men, who had had a perfect opportunity of knowing the views of its framers, must operate as a weighty collateral reason for believing the construction agreeing with this explanation to be right, rather than the opposite one. It is too cardinal a point, to admit readily the supposition that there was misapprehension; and whatever motives may have subsequently occurred to bias the impressions of the one or the other of the persons alluded to, the situation in which they wrote, exempts both from the suspicion of an intention to misrepresent in this particular. Indeed a course of argument more accommodating to the objections of the adversaries of the Constitution would probably have been preferred as most politic, if the truth, as conceived at the time, would have permittted a modification. Much trouble would have been avoided by saying, " The Legislature will have a complete
' controul over the Judges, by the discretionary
' power of reducing the number of those of the

'Supreme Court, and of abolishing the existing 'Judges of the Inferior Courts, by the abolition of 'the Courts themselves." But this pretension is a novelty reserved for the crooked ingenuity of after discoveries.

LUCIUS CRASSUS.

THE EXAMINATION.

NUMBER 16.

THE President, as a politician, is in one sense particularly unfortunate. He furnishes frequent opportunities of arraying him against himself—of combating his opinions at one period, by his opinions at another. Without doubt, a wise and good man may, on proper grounds, relinquish an opinion which he has once entertained, and the change may even serve as a proof of candor and integrity. But with such a man, changes of this sort, especially in matters of high public importance, must be rare. The contrary is always a mark, either of a weak and versatile mind, or of an artificial and designing character; which, accommodating its creed to circumstances, takes up or lays down an article of faith, just as may suit a present convenience.

The question in agitation, respecting the Judiciary Department, calls up another instance of opposition between the former ideas of Mr. Jefferson, and his recent conduct. The leading positions which have been advanced, as explanatory of the policy of the Constitution in the structure of the different Departments, and as proper to direct the interpretation of the provisions, which were contrived to secure the independence and firmness of the Judges, are

to be seen in a very emphatical and distinct form, in the Notes on Virginia. The passage in which they appear, deserves to be cited at length, as well for its intrinsic merit, as by way of comment upon the true character of its author; presenting an interesting contrast between the maxims, which experience had taught him while Governor of Virginia, and those which now guide him as the official head of a great party, in the United States. It is in these words—

"All the powers of Government, Legislative, 'Executive and Judiciary, result to the Legislative 'body. The *concentrating* these in the same hands, 'is precisely the definition of *despotic government*. 'It will be no alleviation that these powers will be 'exercised by a plurality of hands, and not by a sin-'gle one. *One hundred and seventy-three despots 'would surely be as oppressive as One:* Let those who 'doubt it, turn their eyes on the Republic of Ven-'ice. As little will it avail us that they are chosen 'by ourselves. An *elective despotism* was not the 'government we fought for; but one which should 'not only be founded on free principles, but in which 'the powers of government, should be so divided 'and balanced among several bodies of magistracy, as 'that no one could transcend their legal limits without 'being effectually *checked* and *restrained* by the others. 'For this reason, that Convention which passed the 'ordinance of government, laid its foundation on 'this basis, that the legislative, executive and judi-'ciary departments, should be separate and distinct, 'so that no person should exercise the powers of 'more than one of them at the same time. *But no 'barrier was provided between these several powers.* 'The *judiciary* and executive members were left *de-'pendent on the legislative* for their subsistence in of-'fice, and some of them for their continuance in it.

'If, therefore, the legislature assumes executive and 'judiciary powers, no opposition is likely to be made, '—nor if made, can be effectual; because in that 'case, they may put their proceedings into the form 'of an act of assembly, which will render them 'obligatory on the other branches. They have ac- 'cordingly *in many instances decided rights* which 'should have been left to *Judiciary controversy;* and '*the direction of the Executive, during the whole time 'of their session, is becoming habitual and familiar.*"

This passage fully recognizes these several important truths: that the tendency of our governments is towards a CONSENTRATION of the POWERS of the different Departments in the LEGISLATIVE BODY; that such a CONCENTRATION, is precisely the DEFINITION of DESPOTISM, and that an effectual *barrier* between the respective Departments ought to exist. It also, by a strong implication, admits that officers during *good behaviour* are independent of their Legislature for their continuance in office. This implication seems to be contained in the following sentence: "The Judiciary and Exec- 'utive members were left dependent on the Legis- 'lature for their subsistence in office, and *some* of 'them *for their continuance in it.*" The word '*some*,' implies that *others* were not left thus dependent; and to what description of officers can the exception be better applied, than to the Judges, the tenure of whose offices was *during good behaviour?*

The sentiments of the President, delivered at a *period* when he can be supposed to have been under no improper bias, must be regarded by all those, who respect his judgment, as no light evidence of the truth of the doctrine for which we contend. Let us, however, resume and pursue the subject on its merits, without relying upon the aid of so variable and fallible an authority.

At an early part of the discussion in this Examination, a construction of the Constitution was suggested, to which it may not be amiss to return: It amounts to this, that Congress have power to new-model, or even to abrogate an Inferior Court, but not to abolish the office or emoluments of a Judge of such Court previously appointed.—In the Congressional debates, some of the speakers against the repealing law, appear to have taken it for granted, that the *abrogation of the Court must draw with it the abolition of the Judges*, and therefore, have denied in totality, the power of abrogation. In the course of these papers too, it has been admitted, that if the preservation of the Judges cannot be reconciled with the power to annul the Court, then the existence of this power is rightly denied. But in an affair of such vast magnitude, it is all-important to survey with the utmost caution, the ground to be taken, and then to take and maintain it with inflexible fortitude and perseverance. Truth will be most likely to prevail, when the arguments which support it, stop at a temperate mean, consistent with practical convenience. Excess is always error. There is hardly any theoretic hypothesis, which, carried to a certain extreme, does not become practically false. In construing a Constitution, it is wise, as far as possible to pursue a course, which will reconcile essential principles with convenient modifications. If guided by this spirit, in the great question which seems destined to decide the fate of our Government, it is believed that the result will accord with the construction, that *Congress have a right to change or abolish Inferior Courts, but not to abolish the actual Judges.*

Towards the support of this construction, it has been shewn in another place, that the Courts and the Judges are distinct legal *entities*, which, in con-

templation of law, may exist, independently the one of the other—mutually related, but not inseparable. The act proposed to be repealed exemplifies this idea in practice. It abolishes the District Courts of Tennessee and Kentucky, and transfers their Judges to one of the Circuit Courts. Though the authorities and jurisdiction of those Courts are vested in the Circuit Court, to which the Judges are transferred; yet the *identity of the Courts* ceases. It cannot be maintained that Courts, so different in their organization and jurisdiction, are the same; nor could a legislative transfer of the Judges have been constitutional, but upon the hypothesis, that the office of a Judge may survive the Court of which he is a member: A *new appointment* by the Executive, of two additional Judges for the Circuit Court, *would otherwise have been necessary.*

This precedent in all its points, is correct, and exhibits a rational operation of the construction, which regards the office of the Judge, as distinct from the Court; as one of the elements, or constituent parts, of which it is composed; not as a mere incident that must perish with its principal.

It will not be disputed, that the Constitution *might* have provided *in terms*, and with effect, that an Inferior Court which had been *established by law*, might by law be abolished, so, nevertheless, that the Judges of such Court, should retain the offices of Judges of the United States with the emoluments before attached to their offices. The operation of such a provision would be, that when the Court was abolished, all the functions to be executed in that Court, would be suspended, and the Judge could only continue to exert the authorities and perform the duties, which might before have been performed, without reference to causes *pending in Court*; but he would have the capacity to be annex-

ed to another Court, without the intervention of a new appointment, and by that annexation, simply to *renew* the exercise of the authorities and duties which had been *suspended.*

If this might have been the effect of positive and explicit provision, why may it not likewise be the *result* of provisions, which, presenting opposite considerations, point to the same conclusion; as a compromise calculated to reconcile those considerations with each other and to unite different objects of public utility? Surely the affirmative infringes no principle of legal construction; transgresses no rule of good sense.

Let us then enquire, whether there are not in this case opposite and conflicting considerations, *demanding* a compromise of this nature? On the one hand, it is evident, that if an inferior court once instituted, though found inconvenient, cannot be abolished, this is to entail upon the community the mischief, be it more or less, of a first error in the administration of the government: On the other hand, it is no less evident, that if the judges hold their offices at the discretion of the legislature, they cease to be a co-ordinate, and become a dependent branch of the government; from which *dependence*, mischiefs infinitely greater are to be expected.

All these mischiefs, the lesser as well as the greater, are avoided by saying, "*Congress may abo-*
'*lish the Courts, but the Judges shall retain their of-*
'*fices with the appurtenant emoluments.*" The only remaining inconvenience then, will be one too insignificant to weigh in a national scale, that is, the expence of the compensations of the incumbents, during their lives. The future and permanent expence will be done away.

But will this construction secure the benefits intended by the Constitution to be derived from the

INDEPENDENT TENURE OF JUDICIAL OFFICE? —Substantially it will.—The main object is to preserve the judges from being influenced by an apprehension of the loss of the advantages of office. As this loss could not be incurred, that influence would not exist. Their firmness could not be assailed by the danger of being superseded, and perhaps *consigned to want*. Let it be added, that when it was once understood not to be in the power of the Legislature to deprive the Judges of their offices and emoluments, it would be a great restraint upon the *factious motives*, which might induce the *abolition of a court*. This would be much less likely to happen unless for genuine reasons of public utility; and of course there would be a much better prospect of the stability of Judiciary establishments.

LUCIUS CRASSUS.

[The same subject continued in the next number.]

THE EXAMINATION.

NUMBER 17.

IT was intended to have concluded the argument respecting the Judiciary Department with the last number. But a speech* lately delivered in the House of Representatives, having since appeared, which brings forward one new position, and reiterates some others in a form well calculated to excite prejudice, it may not be useless to devote some further attention to the subject.

The new position is, that the clause of the Constitution, enabling the Judges to hold their offices during good behaviour, ought to be understood to

* By Mr. Giles.

have reference to the Executive only, BECAUSE ALL OFFICES ARE HOLDEN OF THE PRESIDENT!!

This is the second example of a doctrine contrary to every republican idea, broached in the course of this debate by the advocates of the repealing law.† Had a Federalist uttered the sentiment, the cry of monarchy would have resounded from one extremity of the United States to the other. It would have been loudly proclaimed that the mask was thrown aside, by a glaring attempt to transform the servants of the people into the supple tools of Presidential ambition. But now, to justify a plain violation of the Constitution, and serve a party purpose, this bold and dangerous position is avowed without hesitation or scruple, from a quarter remarkable, chiefly, for the noisy promulgation of popular tenets.

The position is not correct; and it is of a nature to demand the indignant reprobation of every real Republican. In the theory of all the American Constitutions, offices are holden of the Government, in other words, of the PEOPLE *though the* GOVERNMENT. The appointment is indeed confided to a particular organ, and in instances in which it is not otherwise provided by the Constitution or the Laws, the removal of the officer is left to the pleasure or discretion of that organ. But both these acts suppose merely an instrumentality of the organ; from the necessity or expediency of the people's acting in such case by an agent.—They do not suppose the substitution of the agent to the people, as the object of the feality or allegiance of the officer.

It is said that the word *holden* is a technical term

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* The other is the denial of the right of the Courts to keep the Legislature within its constitutional bounds by pronouncing laws which transgress them, inoperative.

denoting tenure, and implying that there is one who holds; another of whom the thing is holden. This assertion is indeed agreeable to the common use of the word in our law books. But it is hardly to be presumed that it was employed in the Constitution in so artificial a sense. It is more likely that it was designed to be the equivalent of the words *possess, enjoy*. Yet let the assertion be supposed correct.—In this case, it must also be remembered that the term in this *technical* sense includes two things, the quantity of interest in the subject holden, and the meritorious consideration upon which the grant is made; which, in many cases includes service or rent, in all *fealty*; this last, forming emphatically the link or tie between the lord and the tenant, the sovereign and the officer. Will any one dare to say that fealty or allegiance, as applied to the government of the United States, is due from the Officer to the President? Certainly it is not. It is due to the People in their political capacity. If so, it will follow that the office is holden not of the President, but of the *Nation*, State or Government.

It is remarkable that the Constitution has every where used the language "Officers of the United 'States," as if to denote the relation between the officer and the sovereignty; as if to exclude the dangerous pretension that he is the mere creature of the Executive; accordingly, he is to take an oath 'to support the Constitution," that is, an oath of fidelity to the Government; but no oath of any kind to the *President*.

In the theory of the British Government, it is entirely different; there the majesty of the nation is understood to reside in the Prince. He is deemed the real Sovereign. He is, emphatically, the fountain of honour. Allegiance is due to him; and consequently, public offices are, in the true notion of

tenure, holden of him. But in our Constitution the President is not the Sovereign; the Sovereignty is vested in the Government, collectively; and it is of the Sovereignty, strictly and technically speaking, that a public officer holds his office.

If this view of the matter be just, the basis of the argument, in point of fact, fails; and the principle of it suggests an opposite conclusion, namely, that the condition of *good behavior* is obligatory on the whole Government, and ought to operate as a barrier against any authority by which the displacement of the Judges may be, directly or indirectly effected.

In the same speech, much stress has been laid on the words "during *their* continuance *in* office," as implying that the compensation of the Judge was liable to cease by a Legislative discontinuance of the office. If the words had been, during *the continuance of the office*, the argument would have been pertinent —but as they stand, a different inference, if any, is to be drawn from them. They seem rather to relate to the continuance of the *officer* than to that of the *office*. But in truth, an inference either way—is a pitiful subtilty. The clause is neutral; its plain and simple meaning being, that the compensation shall not be diminished while the Judge retains the office. It throws no light whatever on the question *how he may lawfully cease to possess it*.

Another point is presed with great earnestness, and with greater plausibility. It is this, that the Constitution must have intended to attach recompence to service, and cannot be supposed to have meant to bestow compensation, where, in the opinion of the Legislature, no service was necessary. Without doubt, the Constitution does contemplate service as the ground of compensation; but it likewise takes it for granted, that the Legislature will be circumspect in the institution of offices; and es-

pecially, that it will be careful to establish none of a permanent nature, which will not be permanently useful. With this general presumption, the Constitution anticipates no material inconvenience from the permanency of Judicial offices connected with permanent emoluments. And though it should have foreseen that cases might happen in which the service was not needed, yet there is no difficulty whatever in the supposition, that it was willing to encounter the trivial contingent evil of having to to maintain a few superfluous officers, in order to obtain the immense good, of establishing and securing the Independence of the Courts of Justice. The readiness of the officer to render service at the will of the Government, is the consideration as to him, for continuing the compensation. But the essential inducement is the public utility incident to the Independency of the Judicial character. As to the supposition of an enormous abuse of power, by creating a long list of sinecures, and a numerous host of pensioners ; whenever such a thing shall happen, it will constitute one of those extreme cases, which, on the principle of necessity, may authorise extra-constitutional remedies. But these are cases which can never be appealed to for the interpretation of a Constitution, which, in meeting out the powers of the Government, must be supposed to adjust them on the presumption of a fair execution.

A further topic of argument is, that our doctrine would equally restrain the Legislature from abolishing offices held during pleasure. But this is not true. The two things stand on different ground. First, the Executive has such an agency in the enacting of laws, that, as a general rule, the displacement of the officer cannot happen against his pleasure. Second, The pleasure of the President, in

all cases not particularly excepted, is understood to be subject to the direction of the law. Third, an officer during pleasure, having merely a revocable interest, the abolition of his office is no infringement of his right. In subtance, he is a tenant *at the will of the government*, liable to be discontinued by the Executive Organ, in the form of a removal; by the Legislative, in the form of an abolition of the office. These different considerations reconcile the Legislative authority to abolish, with the prerogative of the Chief Magistrate to remove, and with the temporary right of individuals to hold.—And therefore, there is no reason against the exercise of such an authority; nothing to form an exception to the *general competency of the Legislative power to provide for the public welfare.* Very different is the case as to the judges. The most persuasive motives of public policy, the safety of liberty itself, require that the Judges shall be independent of the Legislative body; in order to maintain effectually the separation between the several departments: The provision that their compensation shall not be diminished, is a clear constitutional indication, that their independence was intended to be guarded against the Legislature: The express declaration that they shall hold their offices during good behaviour, that is, upon a condition *dependent on themselves*, is repugnant to the hypothesis that they shall hold at the *mere pleasure of others.* Provisions which profess to confer rights on individals, are always intitled to a liberal interpretation in support of the rights, and ought not, without necessity, to receive an interpretation subversive of them: Provisions which respect the organization of a co-ordinate branch of the Government, ought to be construed in such a manner, as to procure for it, stability and efficiency, rather than in such a manner as to render it weak,

precarious, and dependent: These various and weighty reasons serve to establish strong lines of discrimination between Judicial and other officers; and to prove, that no inference can be drawn from the power of the Legislature as to the latter, which will be applicable to the former.

One more defence of this FORMIDABLE CLAIM is attempted to be drawn from the example of the Judiciary establishment of Great Britain. It is observed, that this establishment, the theme of copious eulogy on account of the independence of the Judges, places those officers upon a footing far less firm than will be that of the judges of the United States, even admitting the right of congress to abolish their offices by abolishing the Courts of which they are members: And as one proof of the assertion, it is mentioned, that the English Judges are removeable by the King, on the address of the two houses of Parliament.

All this might be very true, and yet would prove nothing as to what is or ought to be the construction of our Constitution on this point. It is plain from the provision respecting compensation, that the framers of that Constitution intended to prop the independence of our Judges, beyond the precautions which have been adopted in England in respect to the Judges of that country; and the intention apparent in this particular, is an argument, that the same spirit may have governed other provisions. Cogent reasons have been assigned, applicable to our system, and not applicable to the British system, for securing the independence of our Judges against the Legislative, as well as against the Executive power.

It is alleged that the statute of Great Britain of the 13 of William III. was the model from which the framers of our Constitution copied the provisions for the Independence of our Judiciary. It is cer-

tainly true, that the idea of the tenure of office during good behavior, found in several of our Constitutions, is borrowed from that source. But it is evident that the framers of our Federal System did not mean to *confine* themselves to that model.—Hence the restraint of the Legislative discretion, as to compensation; hence the omission of the provision for the removal of the Judges by the Executive, on the application of the two branches of the Legislature; a provision which has been imitated in some of the state governments.

This very omission affords no light inference, that it was the intention to depart from the principle of making the Judges removeable from office, by the co-operation or interposition of the Legislative Body. Why else was this qualification of the permanent tenure of the office, which forms a conspicuous feature in the British statute, and in some of the state Constitutions, dropped in the plan of the Federal Government?

The insertion of it in the British statute, may also be supposed to have been dictated by the opinion, that without a special reservation, the words *during good behavior* would have imported an irrevocable tenure. If so, the precaution will serve to fortify our construction.

But, however it may seem in theory, in fact, the difference in the genius of the two governments would tend to render the independence of the Judges more secure under the British statute, than it would be in this country, upon the construction which allows to Congress the right to abolish. The reason is this—From the Constitution of the British Monarchy, the thing chiefly to be apprehended is, an overbearing influence of the Crown upon the Judges. The jealousy of Executive influence resting upon more powerful motives in that country, than in this,

it may be expected to operate as a stronger obstacle there than here, to an improper combination between the Executive and Legislative departments to invade the Judiciary. Moreover, the British Executive has greater means of resisting Parliamentary control, than an American Executive has of resisting the control of an American Legislature; consequently, the former would be in less danger than the latter, of being driven to a concurrence in measures hostile to the Independence of the Judges: And in both these ways, there would be greater security for the British than for the American Judges.

Thus is it manifest, that in every attitude in which the subject has been placed, the argument is victorious against the power of Congress to abolish the Judges. But what, alas! avails the Demonstration of this important Truth? The fatal blow has been struck! It is no longer possible to arrest the rash and daring arm of power! Can the proof that it has acted without right, without warrant—can this heal the wound?—Can this renovate the perishing Constitution? Yes, let us hope that this will be the case. Let us trust that the monitory voice of true patriotism will at length reach the ears of a considerate people, and will rouse them to a united and vigorous exertion for the restoration of their VIOLATED CHARTER; not by means, either disorderly or guilty, but by means which the Constitution will sanction and reason approve. Surely this will be so—A people, who, descrying Tyranny at a distance, and guided only by the light of just principles, before they had yet felt the scourge of oppression, could nobly hazard all in the defence of their rights:—A people, who, sacrificing their prejudices on the altar of experience, and spurning the artifices of insidious Demagogues, could, as a deliberate act of national reason, adopt and establish for themselves

a Constitution, which bid fair to immortalize their glory and their happiness: such a people, though misled for a period, will not be the final victims of a delusion, alike inauspicious to their reputation and to their welfare. They will not long forget the fame they have so justly merited, nor give the world occasion to ascribe to accident, what has hitherto been imputed to wisdom. They will disdain to herd with the too long list of degraded nations, who have bowed their necks to unworthy Idols of their own creating—who, immolating their best friends, at the shrine of falsehood, have sunk under the yoke of sycophants and betrayers. They will open their eyes and see the precipice on which they stand! They will look around and select from among the throng, the men who have heretofore established a claim to their confidence on the solid basis of able and faithful service; and they will, with indignation and scorn, banish from their favour the wretched impostors, who, with honeyed lips and guileful hearts, are luring them to destruction! Admonished by the past, and listening again to the counsels of real friends, they will make a timely retreat from the danger which threatens—they will once mere arrange themselves under the banners of the Constitution—with anxious care will repair the breaches that have been made, and will raise new mounds against the future assaults of open or secret enemies!

LUCIUS CRASSUS.

THE EXAMINATION.

NUMBER 18.

IN order to cajole the people, the Message abounds with all the common-place of popular harrangue, and prefers claims of merit, for circumstances of equivocal or of trivial value. With pompous absurdity are we told of the "*multiplication of* '*men, susceptible of happiness,*" (as if this susceptibility were a privilege peculiar to our climate) "*ha-* '*bituated to self-government, and valuing its blessings* '*above all price.*" Fortunate will it be, if the present favorites of the people, do not, before their reign is at an end, transform those blessing into curses, so serious and heavy, as to make even Despotism a desirable refuge from the Elysium of Democracy.

In a country, the propensities of which are opposed even to necessary burdens, an alarm is attempted to be excited about the general tendency of Government, "to leave to labor the *smallest* portion ' of its earnings, on which it can subsist, and to ' *consume the residue* of what it was instituted to ' guard." It might have been well, to have explained whether it is the *whole* of the earnings of labor, which Government is instituted to guard, or only the *residue* after deducting what is *necessary to enable it* to fulfil the duty of protection. Representatives who share with their constituents in an excessive jealousy of Executive abuses, are cantingly admonished to "circumscribe discretionary powers over ' money", though they are known to be already so limited, as that the Executive, even on the prospect of a rupture with a foreign power, would not possess the means of obtaining intelligence the

most necessary for the proper direction of its measures.—That the new administration has not boldly invaded the laws and withheld the funds applicable to the payment of the principal and interest of the public debt, is fastidiously proclaimed as *evidence* that "the public faith has been *exactly* maintained." The praise of a spirit of economy is attempted to be gained, by the suppression of a trifling number of officers, (a majority of whom had become unnecessary by the mere change of circumstances) and by declaiming, with affectation, against "*the multiplication of officers and the increase of expence.*" The proposition to reduce our insignificant *military establishment* (the actual number of troops probably not exceeding that which is intended to be retained) cannot be suggested, without tickling our ears with the trite but favourite maxim, that "*a standing army ought not to be kept up in time of peace.*" To make a display of concern for their prosperity—Agriculture, Manufactures, Commerce, and Navigation are introduced among the pageants of the piece; but, except as "to protection from *casual* embarrassments," we are sagaciously informed that these "GREAT PILLARS *of our prosperity*, ought to be left *to take care of themselves*". The carrying trade, however, seemsto engage more solicitude; no doubt that we may be terrified by the expectation of future evils, from a much traduced instrument,* which *in time past*, has done nothing but good, in spite of the gloomy predictions of patriotic seers.

Such are the minor features of this curious performance. Had these been its only blemishes, a regard to national reputation would have forbidden a comment; but connected as they are with schemes of innovation replete with great present mischief;

* The Treaty with Great-Britain.

and still greater future danger ; designed as they are to varnish over projects which threaten to precipitate our nation from an enviable height of prosperity to that low and an abject state, from which it was raised by the establishment and wise administration of our present Goverment—they become intitled to notice as additional indications of character and disposition.

The merits of the Message have now been pretty fully discussed ; but before it is dismissed, it may be useful to take a view of it in another and a different light ; as one link in a chain of testimony, which the force of circumstances, at every step of the new administration, extorts from them, in favor of their predecessors.

The President, on the threshhold of office, at the first opportunity of speaking to his constituents, in his very inaugural speech ; full of a truth, which the most rancorous prejudice cannot obscure, and not sufficiently reflecting on the inferences which would be drawn, proclaims aloud to the world, that a government, which he had disapproved in its institution and virulently opposed in its progress, was in THE FULL TIDE OF SUCCESSFULL EXPERIMENT. In the last address he again unconsciously becomes the panygerist of those whom he seeks to depreciate. The situation in which (humanly speaking) we have been preserved by the prudent and firm councils of the preceding administrations, amidst the revolutionary and convulsive throes, amidst the desolating conflicts of Europe, is there a theme of emphatic gratulation. It shall not be forgotten, as the solitary merit of the address, that we are reminded of the *gratitude due to heaven* for the blessings of this situation. Amidst the spurious symptoms of a spirit of reform, it is consoling to observe one,

which, in charity, ought to be supposed genuine. But it would not have diminished our conviction of its sincerity, if the instruments of Providence in the accomplisment of the happy work, had not been entirely overlooked; since this would have been evidence of a willingness to acknowledge and retract error—to make reparation for injury. But though they have been overlooked by the Message, the American people ought never for a moment to forget them. Their efforts and their struggles, their moderation and their energy, their care and their foresight; the mad and malignant opposition of their political adversaries; the charges of pusillanimity and perfidy lavished on the Declaration of neutrality; the resistance to measures for avoiding a rupture with Great-Britain; the attempt to rush at once into reprisals; the cry for war with the enemies of France, as the enemies of Republican liberty; all these things should be forever imprinted on the memory of a just and vigilant nation. And in recollecting them, they should equally recollect that the opposers of the salutary plans to which they are so much indebted, were and are the zealous partizans of the present Head of our Government; who have at all times submitted to his influence and implicitly obeyed his nod; who never would have pursued with so much vehemence the course they did, had they known it to be contrary to the views of their Chief: nor should it be forgotten that this Chief in the negociation with the British Minister, conducted by him as Secretary of State, acted precisely as if it had been his design to widen, not to heal the breach between the two countries; that he at first *objected* to the Declaration of neutrality; was afterwards reluctantly dragged into the measures connected with it; was believed by his friends not to approve the system of conduct, of which he was the official

organ; was publicly and openly accused by the then agent of the French Republic with duplicity and deception, with having been the first to inflame his mind with ill impressions of the principles and views of leading characters in our Government, not excepting the revered WASHINGTON; that this Chief, at a very critical period of our affairs in reference to the war of Europe, withdrew from the direction of that department peculiarly charged with the management of our foreign relations, evidently to avoid being more deeply implicated in the consequences of the position, which had been assumed by the Administration; but on the hollow pretence of a dislike to public life and a love of philosophic retirement. Citizens of America——mark the sequal and learn from it instruction! You have been since agitated to the center, to raise to the first station in your Government, the very man who, at a conjuncture when your safety and your welfare demanded his stay, early relinquished a subordinate, but exalted and very influential post, on a pretence as frivolous as it has proved to be insincere! Was *he*, like the virtuous WASHINGTON, forced from a beloved retreat, by the unanimous and urgent call of his country? No: he stalked forth the Champion of Faction—having never ceased in the shade of his retreat, by all the arts of intrigue, to prepare the way to that elevation, for which a restless ambition impatiently panted.

The undesigned eulogy of the men, *who have been slandered out of the confidence of their fellow citizens*, has not been confined to the situation of the country as connected with the war of Europe. In the view given of the very flourishing state of our finances, the worst of the calumnies against those men is refuted, and it is admitted, that in this article of vital importance to the public welfare, their measures

have been provident and effectual beyond example. To the charge of a design to saddle the nation with a perpetual debt, a plain contradiction is given by the concession, that the provisions which have been made for it are so ample, as even to justify the relinquishment of a part no less considerable than the *whole of the internal revenue.* The same proposal testifies the brilliant success of our fiscal system generally; and that it is more than equal to all that has been undertaken, to all that has been promised to the nation.

The report of the Secretary of the Treasury, as published, confirms this high commendation of the conduct of the *former administrations.* After relieving each state from the burden of its particular debt, by assuming the payment of it on account of the United States, in addition to the general debt of the nation; after settling the accounts between the states relatively to their exertions for the common defence in our revolutionary war, and providing for the balances found due to such of them as were creditors; after maintaining with complete success, an obstinate and expensive war with the Indian tribes; after making large disbursements for the suppression of two insurrections against the Government; after liberal contributions to the Barbary powers to induce them to open to our merchants the trade of the Mediterranean; after incurring a responsibility for indemnities to a large amount, due to British merchants, in consequence of infractions of the Treaty of peace by some of the states; after heavy expenditures for creating and supporting a navy and for other preparations, to guard our independence and territory against the hostilities of a foreign nation; after the accomplishment of all these very important objects, it is now declared to the United States by the present head of the Treasury, by the confidential minister of the

present Chief Magistrate, by the most subtil and implacable of the enemies of the former administrations, "That the actual revenues of the Union are 'sufficient, *to defray all the expences civil aud military* of 'Government, *to the extent authorized by existing laws*, 'to meet ALL THE ENGAGEMENTS OF THE UNI-'TED STATES; *and to discharge in fifteen years and 'a half*, THE WHOLE OF OUR PUBLIC DEBT"—foreign as well as domestic, *new* as well as *old*. Let it be understood, that the revenues spoken of were *all provided under the two first administrations*; and, that the "existing laws" alluded to, were all passed under the same administrations; consequently, that *the revenues had not been increased, nor the expences diminished by the men who now hold the reins:* and then let it be asked, whether so splendid a result does not reflect the highest credit on those, who in time past, have managed the affairs of the Nation? Does not the picture furnish matter not only for consolation, but even for exultation to every true friend of his country? And amidst the joy which he must feel in the contemplation, can he be so unjust as to refuse the tribute of commendation to those, by whose labors his country has been placed on so fair an eminence? Will he endure to see any part of the fruits of those labors blasted or hazarded, by a voluntary surrender of any portion of the means which are to ensure the advantages of so bright a prospect?

In vain will envy or malevolence reply, "The 'happy situation in which we are placed is to be at-'tributed not to the labors of those who have here-'tofore conducted our affairs, but to an unforeseen 'and unexpected progress of our country." Candor and truth will answer—Praise is always due to public men who take their measures in such a manner as to derive to the nation, the benefit of favora-

ble circumstances which are possible, as well as of those which are foreseen. If proportionate provision had not been made, concurrently with the progress of our national resources, the effect of them would not have been felt as to the past, and would not have been matured as to the future.

But why should it be pretended that this progress was not anticipated? In past experience, there were many data for calculation. The ratio of the increase of our population had been observed and stated; the extent and riches of our soil were known; the materials for commercial enterprize were no secret; the probable effect of the measures of the government to foster and encourage navigation, trade and industry, was well understood; and especially, the influence of the means, which were adapted to augment our active capital, and to supply a fit and adequate medium of circulation, towards the increase of national wealth, was declared and insisted upon, in official reports. Though adventitious circumstances may have aided the result, it is certain, that a penetrating and comprehensive mind could be at no loss to foresee a progress of our affairs, similar to what has been experienced. Upon this anticipation the assumption of the state debts, and other apparently bold measures of the Government were avowedly predicated, in opposition to the feeble and contracted views of the LITTLE POLITICIANS, who now triumph in the success of their arts, and enjoy the benefits of a policy, which they had neither the wisdom to plan nor the spirit to adopt; idly imagining that the cunning of a demagogue and the talents of a statesman are synonymous. Consummate in the paltry science of courting and winning popular favor, they falsely infer that they have the capacity to govern, and they will be the last to discover their error. But let them be assured that the peo-

ple will not long continue the dupes of their pernicious sorceries. Already the cause of truth has derived this advantage from the crude essays of their Chief, that the film has been removed from many an eye. The credit of great abilities was allowed him by a considerable portion of those who disapproved his principles; but the short space of nine months has been amply sufficient to dispel that illusion; and even some of his most partial votaries begin to suspect, that they have been mistaken in the OBJECT OF THEIR IDOLATRY.

LUCIUS CRASSUS.

WASHINGTON CITY, Dec. 8.

THIS DAY

At twelve o'clock, the following MESSAGE was *delivered* to each House by Mr. Lewis, Secretary to the President.

MESSAGE

OF THE PRESDENT OF THE UNITED STATES, TO BOTH HOUSES OF CONGRESS.

DECEMBER 8, 1801.

SIR,

THE circumstances under which we find ourselves at this place rendering inconvenient the mode heretofore practised, of making by personal address the first communications between the Legislative and Executive branches, I have adopted that by Message, as used on all subsequent occasions through the cession. In doing this, I have had principal regard to the convenience of the Legislature, to the economy of their time, to their relief from the embarressment of immediate answers, on subjects not yet fully before them, and to the benefits thence resulting to the public affairs.—Trusting that a procedure, founded in these motives, will meet their approbation, I beg leave, through you, Sir, to communicate the inclosed Message with the documents accompanying it, to the Honorable the House of Representative, and pray you to accept, for yourself and them, the homage of my high respect and consideration.

Th: JEFFERSON.

The Honorable the Speaker of the House of Representatives.

Fellow-Citizens of the Senate,
And of the House of Representatives,

IT is a circumstance of sincere gratification to me, that on meeting the great council of the nation, I am able to announce to them on grounds of reasonable certainty, that the wars and troubles, which have for so many years afflicted our sister nations, have at length come to an end; and that the

communications of peace and commerce are once more opening among them. Whilst we devoutly return thanks to the beneficent being who has been pleased to breathe into them the spirit of conciliation and forgiveness, we are bound, with peculiar gratitude, to be thankful to him that our own peace has been preserved through so perilous a season, and ourselves permitted quietly to cultivate the earth, and to practise and improve those arts which tend to increase our comforts. The assurances indeed of friendly disposition received from all the powers with whom we have principal relations, had inspired a confidence that our peace with them would not have been disturbed. But a cessation of the irregularities which had afflicted the commerce of neutral nations, and of the irritations and injuries produced by them, cannot but add to this confidence; and strengthens at the same time, the hope that wrongs committed on unoffending friends, under a pressure of circumstances, will now be reviewed with candor, and will be considered as founding just claims of retribution for the past, and new assurances for the future.

Among our Indian neighbours also, a spirit of peace and friendship generally prevails; and I am happy to inform you that the continued efforts to introduce among them the implements and the practice of husbandry, and of the household arts, have not been without success:—That they are become more and more sensible of the superiority of this dependence for clothing and subsistence, over the precarious resources of hunting and fishing: And already we are enabled to announce that, instead of that constant diminution of numbers produced by their wars and their wants, some of them begin to experience an increase of population.

To this state of general peace with which we have been blessed, one only exception exists. Tripoli, the least considerable of the Barbary states, had come forward with demands unfounded either in right or compact, and had permitted itself to denounce war, on our failure to comply before a given day. The style of the demand admitted but one answer. I sent a small squadron of frigates into the Mediterranean, with assurances to that power of our sincere desire to remain in peace; but with orders to protect our commerce against the threatened attack. The measure was seasonably and salutary. The Bey had already declared war in form. His cruisers were out. Two had arrived at Gibralter. Our commerce in the Mediterranean was blockaded; and that of the Atlantic in peril. The arrival of our squadron dispelled the danger. One of the Tripolitan cruisers having fallen in with and engaged the small schooner Enterprize, commanded by Lieutenant Sterret, which

had gone out as a tender to our larger vessels, was captured, after a heavy slaughter of her men, without the loss of a single one on our part. The bravery exhibited by our citizens on that element will, I trust, be a testimony to the world, that it is not a want of that virtue which makes us seek their peace; but a conscientious desire to direct the energies of our nation to the multiplication of the human race; and not to its destruction. Unauthorised by the Constitution, without the sanction of Congress to go beyond the line of defence, the vessel being disabled from committing further hostilities, was liberated, with its crew. The Legislature will doubtless consider whether, by authorising measures of offence also, they will place our force on an equal footing with that of its adversaries. I communicate all material information on this subject, that in the exercise of the important function, confided by the Constitution to the Legislature exclusively, their judgment may form itself on a knowledge and consideration of every circumstance of weight.

I wish I could say that our situation with all the other Barbary states was entirely satisfactory. Discovering that some delays had taken place in the performance of certain articles stipulated by us, I thought it my duty, by immediate measures for fulfilling them, to vindicate to ourselves the right of considering the effect of departure from stipulation on their side. From the papers which will be laid before you, you will be enabled to judge whether our treaties are regarded by them as fixing at all the measure of their demands, or as guarding against the exercise of force, our vessels within their power; and to consider how far it will be safe and expedient to leave our affairs with them in their present posture.

I lay before you the result of the census lately taken of our inhabitants, to a conformity with which we are to reduce the ensuing rates of representation and taxation. You will perceive that the increase of numbers, during the last ten years, proceeding in geometrical ratio, promises a duplication in little more than twenty-two years. We contemplate this rapid growth, and the prospect it holds up to us, not with a view to the injuries it may enable us to do to others in some future day, but to the settlement of the extensive country still remaining vacant within our limits, to the multiplication of men susceptible of happiness, educated in the love of order, habituated to self-government, and valuing its blessings above all price.

Other circumstances, combined with the increase of numbers, have produced an augmentation of revenue arising from consumption, in a ratio far beyond that of population alone;

and though the changes in foreign relations, now taking place so desirably for the whole world, may, for a season affect this branch of revenue, yet, weighing all probabilities of expence, as well as of income, there is reasonable ground of confidence that we may now safely dispense with all the internal taxes, comprehending excises, stamps, auctions, licences, carriages and refined sugars: to which the postage on newspapers may be added to facilitate the progress of information: and that the remaining sources of revenue will be sufficient to provide for the support of government, to pay the interest of the public debts, and to discharge the principals in shorter periods than the laws, or the general expectation had contemplated. War, indeed, and untoward events may change this prospect of things, and call for expences which the imposts could not meet. But sound principles will not justify our taxing the industry of our fellow citizens to accumulate treasure for wars to happen we know not when, and which might not, perhaps, happen, but from the temptations offered by that treasure.

These views, however, of reducing our burthens, are formed on the expectation, that a sensible, and at the same time, a salutary reduction may take place in our habitual expenditures. For this purpose, those of the civil government, the army and navy, will need revisal. When we consider that this government is charged with the external and mutual relations only of these states; that the states themselves have principal care of our persons, our property, and our reputation, constisfuting the great field of human concerns, we may well doubt whether our organization is not too complicated, too expensive; whether offices and officers have not been multiplied unnecessarily, and sometimes injuriously to the service they were meant to promote. I will cause to be laid before you an essay towards a statement, of those who, under public employment of various kinds, draw money from the treasury, or from our citizens.—Time has not permitted a perfect enumeration; the ramifications of office being too multiplied and remote, to be compleatly traced in a first trial. Among those who are dependant on executive discretion, I have begun the reduction of what was deemed unnecessary. The expences of diplomatic agency have been considerably diminished. The inspectors of the internal revenue, who were found to obstruct the accountability of the institution, have been discontinued. Several agencies, created by executive authority, on salaries fixed by that also, have been suppressed, and should suggest the expediency of regulating that power by law, so as to subject its exercises to legislative inspection and sanction. Other reformations of the same kind will be pursued, with that caution which is requisite

in removing useless things, not to injure what is retained.—But the great mass of public offices are established by law, and therefore, by law alone can be abolished. Should the legislature think it expedient to pass this roll in review, and to try all its parts by the test of public utility, they may be assured of every aid and light which executive information can yield.—Considering the general tendency to multiply offices and dependencies, and to increase expence, to the ultimate term of burthen which the citizens can bear, it behoves us to avail ourselves of every occasion which presents itself for taking off the surcharge, that it never may be seen here, that, after leaving to labour the smallest portion of its earnings on which it can subsist, government shall itself consume the residue of what it was instituted to guard.

In our care too of the public contributions entrusted to our direction, it would be prudent to multiply barriers against their dissipation, by appropriating specific sums to every specific purpose susceptible of definition: by disallowing all applications of money varying from the appropriation in object or transcending it in amount: by reducing the undefined field of contingencies, and thereby circumscribing discretionary powers over money; and by bringing back to a single department all accountabilities for money, where the examination may be prompt, efficacious and uniform.

An account of the receipts and expenditures of the last year, as prepared by the secretary of the Treasury, will, as usual, be laid before you. The success which has attended the late sales of the public lands shews, that with attention, they may be made an important source of receipt. Among the payments, those made in discharge of the principal and interest of the national debt, will shew that the public faith has been exactly maintained. To these will be added an estimate of appropriations necessary for the ensuing year. This last, will, of course be affected by such modifications of the system of expence as you shall think proper to adopt.

A statement has been formed by the secretary at war, on mature consideration of all the posts and stations where garrisons will be expedient, and of the number of men requisite for each garrison. The whole amount is considerably short of the present military establishment. For the surplus no particular use can be pointed out. For defence against invasion, their number is as nothing; nor is it considered needful or safe that a standing army should be kept up in time of peace, for that purpose. Uncertain as we must ever be of the particular point in our circumference where an enemy may chuse to invade us, the only force which can be ready at every point, and compet-

ent to oppose them, is the body of neighboring citizens, as formed into a militia. On these, collected from the parts most convenient, in numbers proportioned to the invading force, it is best to rely not only to meet the first attack, but if it threatens to be permanent, to maintain the defence until regulars may be engaged to relieve them. These considerations render it important that we should, at every session, continne to amend the defects, which from time to time shew themselves, in the laws for regulating the militia, until they are sufficiently perfect: nor should we now, or at any time, separate, until we can say we have done every thing for the militia, which we could do, were an enemy at our door.

The provision of military stores on hand will be laid before you, that you may judge of the additions still requisite.

With respect to the extent to which our naval preparations should be carried, some difference of opinion may be expected to appear: but just attention to the circumstances of every part of the union will doubtless reconcile all. A small force will probably continue to be wanted, for actual service, in the Mediterranean. Whatever annual sum beyond that you may think proper to appropriate to naval preparations, would perhaps be better employed in providing those articles which may be kept without waste or consumption, and be in readiness when any exigence calls them into use. Progress has been made, as will appear by papers now communicated, in providing materials for seventy-four gun ships as directed by law.

How far the authority given by the legislature for procuring and establishing sites for naval purposes, has been perfectly understood and pursued in the execution, admits of some doubt. A statement of the expences already incurred on that subject shall be laid before you. I have in certain cases, suspended or slackened these expenditures, that the legislature might determine whether so many yards are necessary as have been contemplated. The works at this place are among those permitted to go on; and five of the seven frigates directed to be laid up, have been brought and laid up here, where, besides the safety of their position, they are under the eye of the executive administration, as well as of its agents, and where yourselves also will be guided by your own view, in the legislative provisions respecting them, which may from time to time be necessary. They are preserved in such condition, as well the vessels as whatever belongs to them, as to be at all times ready for sea on a short warning. Two others are yet to be laid up, so soon as they shall have received the repairs requisite to put them also into sound condition. As a superintending officer will be necessary at each yard, his duties and emoluments,

hitherto fixed by the Executive, will be a more proper subject of legislation. A communication will also be made of our progress in the execution of the law respecting the vessels directed to be sold.

The fortifications of our harbours, more or less advanced, present considerations of great difficulty. While some of them are on a scale sufficiently proportioned to the advantages of their position, to the efficacy of their protection, and the importance of the points within it, others are so extensive, will cost so much in their first erection, so much in their maintainance, and require such a force to garrison them, as to make it questionable what is best now to be done. A statement of those commenced or projected, of the expences already incurred, and estimates of their future cost, as far as can be foreseen, shall be laid before you, that you may be enabled to judge whether any alteration is necessary in the laws respecting this subject.

Agriculture, manufactures, commerce, and navigation, the four great pillars of our prosperity, are then most thriving, when left most free to individual enterprize. Protection from casual embarrassments, however, may sometimes be seasonably interposed. If in the course of your observations or enquiries, they should appear to need any aid, within the limits of our constitutional powers, your sense of their importance is a sufficient assurance they will occupy your attention. We cannot, indeed, but all feel an anxious solicitude for the *difficulties under which our carrying trade will soon be placed. How far it can be relieved, otherwise than by time, is a subject of important consideration.

The judiciary system of the United States and especially that portion of it recently erected, will of course present itself to the contemplation of Congress; and that they may be able to judge of the proportion which the institution bears to the business it has to perform, I have caused to be procured from the several states, and now lay before Congress, an exact statement of all the causes decided since the first establishment of the Courts, and of those which were depending when additional Courts and Judges were brought in to their aid.

And while on the Judiciary organization, it will be worthy your consideration whether the protection of the inestimable institution of juries has been extended to all the cases involving the security of our persons and property. Their impartial selection also being essential to their value, we ought further to consider whether that is sufficiently secured in those states, where they are named by a marshal depending on Executive will, or designated by the Court, or by officers dependent on them.

I cannot omit recommending a revisal of the laws on the subject of naturalization. Considering the ordinary chances of human life, a denial of citizenship under a residence of fourteen years, is a denial to a great proportion of those who ask it ; and controuls a policy pursued from their first settlement, by many of these States, and still believed of consequence to their prosperity. And shall we refuse to the unhappy fugitives from distress that hospitality which the savages of the wilderness extended to our fathers arriving in this land ? Shall oppressed humanity find no asylum in this globe ? The Constitution, indeed, wisely provided, that, for admission to certain offices of important trust, a residence shall be required sufficient to develope character and design. But might not the general character and capabilities of a citizen be safely communicated to every one manifesting a *bona fide* purpose of embarking his life and fortune permanently with us ? With restrictions, perhaps, to guard against the fraudulent usurpation of our flag ; an abuse which brings so much embarrassment and loss on the genuine citizen, and so much danger to the nation of being involved in war, that no endeavour should be spared to detect and suppress it.

These fellow-citizens, are the matters respecting the state of the nation, which I have thought of importance to be submitted to your consideration at this time. Some others of less moment, or not yet ready for communication, will be the subject of separate Messages. I am happy in this opportunity of committing the arduous affairs of our government to the collected wisdom of the union. Nothing shall be wanting on my part to inform, as far as in my power, the legislative judgment; nor to carry that judgment into faithful execution. The prudence and temperance of your discussions will promote, within your own walls, that conciliation which so much befriends rational conclusion; and by its example will encourage among our constituents that progress of opinion which is tending to unite them in object and in will. That all should be satisfied with any one order of things, is not to be expected ; but I indulge the pleasing persuation, that the great body of our citizens will cordially concur in honest and disinterested efforts which have for their object, to preserve the general and state governments in their constitutional form and equilibrium ; to maintain peace abroad, and order and obedience to the laws at home ; to establish principles and practices of administration, favorable to the security of liberty and property, and to reduce expences to what is necessary for the useful purposes of government.

TH : JEFFERSON.